

Strengthening victim's rights: from compensation to reparation

For a new EU Victims' rights strategy 2020-2025

**Report of the Special Adviser, J. Milquet,
to the President of the EU Commission,
Jean-Claude Juncker –February 2019.**

SUMMARY

EXECUTIVE SUMMARY

PREFACE

I. Introduction: What place for victims' rights in the European area of freedom, security and justice?	1
A. Human rights-based concept of victimization	1
B. Objectives of Compensation	2
C. Evolution of victims' rights in International law and in European law	4
1. International law.....	4
2. European law.....	5
D. State of play and new threats and challenges	7
1. State of play	7
2. New threats and challenges	8
II. Problems faced by victims	11
A. General problems	11
1. Lack of/Access to information and to guidance	11
a) The lack of information and clear guidance.....	11
b) The failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them.....	12
c) Information on compensation for victims is not available.....	12
d) Lack of assistance in accessing information.....	12
e) Lack of quality of information.....	13
f) Information is not provided in accordance with victims' individual needs.....	13
g) Lack of guidance and training.....	13
2. Problems concerning State compensation	13
a) Low amounts of compensation.....	13
b) Restrictive eligibility criteria for state compensation.....	14
c) Lack of emergency payments or upfront payment.....	14
d) Lack of extended notion of reparation in kind.....	15
e) Limited compensation resources of some Member State.....	15
3. Problems concerning Offender compensation	15
a) Lack of financial means to compensate the victim.....	15
b) Difficulties in the enforcement of compensation decision.....	15
c) Lack of systems of compensation to the victims as a criminal sanction.....	15

4. Procedural obstacles: Lengthy, complex and costly procedures that lead to victims being discouraged from claiming compensation.....	16
a) Interdependence between state compensation and offender compensation.....	16
b) The costs of procedures to obtain compensation are too high for victims.....	16
c) Slow procedures and lack of respect by the compensation authorities of the compensation decision deadlines.....	17
d) Restrictive time limits to apply for compensation.....	17
e) Refusal because of incompleteness of file.....	17
f) Lack of transparency of the decision-making process	17
g) The limited use of alternatives to judicial proceedings	18
h) The limited scope for review of the compensation decision.....	18
5. Cross-border and international victimisation.....	18
a) Low number of cross-border compensation claims.....	18
b) Lack of collaboration across Member States.....	18
6. Lack of compensation in case of violent acts which occur outside EU or with non EU residents.....	19
7. Insurance.....	19
B. Specific needs and problems of victims of certain categories of crime.....	20
1. Terrorism.....	20
2. Trafficking of human beings.....	23
3. Gender-based violence.....	24

III. European and national new strategy on victim’s rights and compensation.....28

A. Introduction: The need for a EU victims’ rights strategy.....	28
1. Why do we need a EU victims’ rights strategy for the next five years?.....	29
a) Compensation of victims of violent crimes is much more than a mere question of solidarity and empathy, it is a question of ensuring that victims’ have effective access to their rights.....	29
b) Compensations for victims of violent crimes is a key question of equal treatment between EU citizens and of the need to build a more harmonized Europe.....	30
c) Political parallelism with the increased focus on the fight against violence and terrorism in EU.....	30
d) Risk of an increase in official numbers of victim.....	31
e) Need for a “victims’ rights EU strategy”	31

2. Which Objectives for a European strategy for victims of intentional violent crimes?	32
a) Shift from the concept of “need to state compensation” limited to financial assistance to the concept of “right to reparation” including the coverage of the different personal damages and the personal support needed.....	33
b) Shift from the offender compensation prior the state compensation to the state compensation prior to the offender compensation.....	34
c) The shift from an insufficient to a much more harmonised and cooperative approach.....	35
d) Shift concerning state compensation from the compensation by the member state where the violent act occurs to the possibility of compensation by the Member State in the Member states of residence.....	35
3. Which Methodology for a EU victims’ rights strategy?	36
B. Recommendations for a EU victims’ rights strategy	37
1. Better cooperation at national and EU level	38
a) Better cooperation at national level.....	38
b) Better coordination at EU level.....	41
c) EU actions to improve collaboration between different national authorities and with stakeholders.....	44
d) EU initiatives to set up the EU Solidarity Fund for victims of terrorism.....	46
2. Better and more accurate information on victim’s rights and state or offender compensation	46
a) Short term actions and Recommendations to sufficiently and accurately inform the victims on a simple way about their rights and compensation schemes.....	46
b) Short terms recommendations and actions to ensure that victims are sufficiently informed about how to proceed through the complex administrative and judicial procedures.....	48
c) Recommendations to have Information available in others languages.....	49
3. EU initiatives for better training and guidance to ensure respectful treatment of victims in state and offender compensation schemes	50
4. EU initiatives for quicker, fairer and simpler state compensation scheme	52
a) Need for a clear definition of “victims” and “intentional violent act” (legislative change).....	52
b) Abolition of the possibility of unfair eligibility criteria.....	54
c) Adaptation of Article 2 of the Compensation Directive to allow the victims to be compensated in the member State of residence.....	55
d) EU recommendations or obligations to set up national guaranty funds as national compensation authority and single contact point for the victims to be compensated (SC).....	56

- e) Providing for fairer and more harmonized state compensation mechanism based on a principle of reparation of the personal damages experienced and the need for support services tailored to the personal situation.....58
- f) Less costly and complex state compensation procedures at national and cross borders levels.....59

5. EU initiatives to improve the offender compensation to the victims within the judicial proceeding.....61

- a) A "compensation measure" in the form of an accessory penalty related to the financial capacity of the offender that would exist along with civil claim, decided by the judge ex officio and enforced by Member States.....61
- b) Improvement during the judicial proceeding.....61
- c) Recommendations addressing difficulties in enforcement of offender compensation.....63
- d) Confiscation as a more generalized mechanism to help the victims to be compensated.....63

6. EU initiatives for more adequate, multidisciplinary and more personalised support services in accordance with victims' individual needs.....64

IV. Conclusion.....66

V. Annexes.....1

- 1. ANNEX I : General needs of victims of violent crime1
- 2. ANNEX II : Summary of the Survey launched in the Framework of this report by victims' support organisations on the needs of victims of terrorism in relation to compensation Victims of terrorism.....4
- 3. ANNEX III : Problems faced by victims.....8
- 4. ANNEX IV: Good practices.....47
- 5. ANNEX V : French system of compensation.....52

“You are not a victim. No matter what you have been through, you're still here. You may have been challenged, hurt, betrayed, beaten, and discouraged, but nothing has defeated you. You are still here! You have been delayed but not denied. You are not a victim you are a victor. You have a history of victory.”

Steve Maraboli, “Unapologetically You: Reflections on Life and the Human”

Executive summary

The report of Special Adviser Joëlle Milquet on “Strengthening victims’ rights: from compensation to reparation” tackles the main problems that victims of crime currently face when claiming compensation in European Union.

The report takes a holistic view to compensation and is not limited to the pecuniary aspects of compensation or the compensation procedure *stricto sensu*.

The Special Adviser looks into the causes underlying the problems that victims face when claiming compensation (such as difficulties in accessing justice or state compensation related to a lack of information, insufficient support, and overly-restrictive eligibility criteria or procedural hurdles). Victims of crime may claim and receive compensation only at the end of a very long process. This process starts with reporting a crime and goes on through different stages of criminal and often additional civil or administrative proceeding to end up with yet another procedure - during which victims may claim state compensation. It only takes one element to go wrong during one of the stages that precedes the state compensation and they will not receive it. **The Special Adviser looks into these interdependencies and tackles not only compensation *per se* but also the subjects that condition its access.**

This report is founded **on a human rights-based approach** to criminal justice. It is based on the assumption that victims of crimes against the person have a right to justice and that criminal justice serves to redress – to ‘right’ – the wrong done to victims. If an offender, by committing a violent crime, calls victims’ rights into question or fails to compensate, victims can legitimately expect that their legal community will defend their rights to justice in criminal proceedings and that the State will have the duty to compensate them in place of the offender.

The reports is based on a **participatory method** involving from the early beginning the different national and European stakeholders including national and EU public authorities and European and EU support services in order to present findings and recommendations that respond to the victims’ actual needs expectations

The report looks in detail into **problems that victims currently face when accessing justice and state compensation**. Thanks to contributions from different stakeholders¹, the analysis of problems takes into account the perspective of victims and victim support organisations and the perspective of national compensation authorities. Such an approach contributes to finding the right balance between the expectations and needs of victims and the feasibility of actions. The analysis of problems is divided into five broad categories. They include problems related to: lack of information, state compensation, offender compensation and numerous procedural obstacles (such as interdependence between state compensation and offender compensation, costly procedure, and restrictive time-limits). Problems in cross-border cases are dealt with in a separate chapter. For persons who became victims of crime when travelling to another EU Member State, it is even more difficult to receive compensation in a country

¹ The views of victims were gathered by victim support organisations, notably Victim Support Europe, V European and other victim support organisations who conducted questionnaires and gathered victims’ testimonies. The data related to the state of play of national compensation schemes comes from a study of the European Network of Victims’ Rights and is based on a series of Member States’ questionnaires that were done in the course of 2018. Moreover, the report also takes into account documents (such as reports, studies) from the European Commission and EU agencies (such as EIGE).

which they do not know and where they do not reside. Such additional difficulties affect even more the already great disparities in victims' access to compensation among the EU Member States.

The Special Adviser also highlights **the importance of taking into account not only the general problems faced by victims but also specific problems related to individual characteristics of each victim** (such as age, gender and gender identity, ethnicity, race; disability or religion). Moreover, she dedicates a part of her report to victims of particular categories of crimes: victims of terrorism, victims of trafficking and victims of gender-based violence.²

The report provides **numerous examples of what works well for victims in different Member States and at the EU level**. In this regard, the proposals of a new EU strategy for victims' rights should build on what has been achieved so far and should go further. The report recognises the achievements of the 2012 Victims' Rights Directive, which delivered a set of binding rights for all victims of all crimes and corresponding obligations on Member States. The EU has also adopted a series of specific rules that deal with victims of specific categories of crime. Within the major achievements, the Special Adviser underlines the 2011 Anti-trafficking Directive that lays down specific rights for victims of trafficking in human beings and sets up the Office of the EU Anti-trafficking Coordinator. Another achievement is the adoption of the 2017 Counter-terrorism Directive that addresses the specific rights of victims of terrorism, including the right to specialised support immediately after an attack and for as long as necessary. The EU Centre for victims of terrorism that the Commission is planning to set up in 2019 in response to a call from the European Parliament should be another example of good practice.

The Special Adviser however admits that even the best rules are only as good as their implementation and practical application. It is now up to the Member States, under the supervision of the Commission, to ensure correct transposition and application of these rules. The Special Adviser also admits that victims' access to compensation (both offender and state compensation) is still left to the Member States' discretion. These lacunae in the EU legislation hinder victims' access to compensation and expose them to a high risk of secondary victimisation. The victims, in general, don't receive a fair compensation or sufficient tailored support services

When it comes to recommendations, the Special Adviser is of the view that the scale of problems as well as their cross-cutting nature requires **a new strategic approach**. If victims cannot access justice (because they are afraid to report the crime), or cannot claim offender compensation in civil proceedings (because they cannot afford it) or are sufficiently not even aware of their right to compensation (because no one informed them) – their access to compensation will always be hindered. Therefore, for the next five years, the Special Adviser calls for setting up **an ambitious EU victims' rights strategy that would tackle the problems in a holistic and horizontal manner**. The proposal for a new EU victims' rights strategy would include **a two steps-graduation** (depending on the choice of the next Commission): the first step with immediate practical initiatives to be taken by the EU without any changes to EU legislation and the second step with recommendations requiring EU legislative changes.

The Special Adviser proposes that the EU victims' rights strategy is built around **four "paradigm shifts" ("major principles")** that aim at strengthening victims' rights by changing considerably the current approach towards victims' compensation:

² Other categories of crime or other victims – such as children also deserve a special attention. The limited scope of this report did not allow elaborating this subject.

- a **“shift” from compensation to reparation** (involving a departure from compensation as a mere payment of an insufficient pecuniary lump sum towards the broader concept of reparation including the compensation for the different individual damages experienced to be covered but also to recognition, restitution, support and care (what we can call compensation “in kind”))
- a **shift to the priority of state compensates first** - by adopting the principle of the states’ upfront payment where the state compensates victims first and later recaptures it from the offender as opposed to the victim having to claim from the offender first.
- a **shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards.**
- a **shift from the needs-based approach towards the rights-based approach** – this approach changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability or needs but rather demanding that the state should take seriously its duty and what it owes to the individuals living on its territory and their human rights.

The proposed strategy of the Special Adviser is composed of **40 detailed recommendations that are constructed around six blocks**, aimed at improving different aspects of victims’ compensation: **better cooperation, training, information, state compensation, offender compensation and support services.** The recommendations are illustrated with good practices.

The major recommendations in the area of **cooperation and coordination** (one of the four “shifts”) include the adoption of national strategies on victims’ rights, setting up national coordinators for victims’ rights and national coordination structures including national crisis centres. At the EU level, the Special Adviser calls for a nomination of an EU Coordinator for victims’ rights and for setting up of an EU multidisciplinary centre for victims of all crime. Such a centre could build on the EU Centre for Expertise for victims of terrorism that will be set up by the Commission in 2019 (to be incorporated into the larger centre as a specific victims of terrorism department). The Special Adviser also calls for an EU solidarity fund for victims of terrorism.

When it comes to recommendations related to **access to information**, the Special Adviser recommends a set of immediate concrete actions and also to oblige prosecutors/judges to verify victims’ awareness of their right to claim compensation from the offender during criminal proceedings. Regarding improvements to training, the Special Adviser proposes mandatory training for all persons coming into contact with victims and in particular for judges and prosecutors, as well as new EU actions concerning EU websites, expertise and an awareness-raising campaign.

When it comes to the major recommendations to improve **state compensation**, the most important recommendation is to consider that, for victims of violent acts “fair compensation” implies compensation for the personal psychological, physical and material harm experienced and not compensation with insufficient cash payments via lump sums. It implies compensation for non-pecuniary damages but also compensation via free support services (one of the four “shifts”). The most important recommendation is to facilitate victims’ access to compensation by legally ensuring emergency and upfront payment by the state (one of the four “shifts”). The most efficient way to achieve this recommendation would be via legislative changes at the EU level. Other important recommendation (one of the four “shifts”) in relation to improvements to state compensation included is to allow cross

border victims **to access state compensation in their country of residence, and not in the Member State where the crime occurs**. Special Adviser recommend to set up national compensation funds and single compensation contact points for the victims Adviser recommends to precise the definition of “victims eligible for compensation” and “intentional violent act”.

The major recommendations related to improvements of the **offender compensation** schemes (within the criminal proceeding) include the introduction of a possibility for criminal judges to impose compensation measures in a form of accessory penalties. The Special Adviser also pleads for better access to legal aid for victims of crime and better enforcement measures.

The final recommendations of the Special Adviser respond to victims’ expectations for free multidisciplinary victims support services from the beginning to the end of their difficulties. Provision of support services, including personal navigators and setting up national resilience platforms should be considered as part of the compensation *sensu largo* (“compensation in kind”).

The Special Adviser concludes her report with a call to reaffirm and reinforce more the never the EU and national commitments to strengthening victims’ rights. According to the Special Adviser, it is important to show Europeans that they are living in a Humanistic Europe that protects, cares, repairs, connects, supports and offers a new beginning for everybody.

Joëlle Milquet

2019-10-2

PREFACE

On 4 October 2017, President Jean-Claude Juncker appointed Joëlle Milquet as his Special Adviser for compensation to victims of crime. The overall objective of the Special Adviser was to explore the possibilities and suggest solutions on how to improve victims' access to compensation. In particular, the mandate of Joëlle Milquet was to advise the President on how the Commission can foster a better implementation of the existing rules on the compensation of victims of crime and how to improve cooperation among national authorities responsible for the compensation of victims of crime, specifically with regard to cross border situations. The mandate of the Special Adviser also requests her to recommend options for a faster and fairer compensation across the EU. With the present report, the Special Adviser presents her recommendations on the above subjects and concludes her mission as the Special Adviser to the President of the Commission.

- This report is based on a **participatory method**. I have chosen this method in order to present findings and recommendations that respond to the victims' actual needs and expectations and take into account concrete problems faced by national compensation bodies and by victims support services. I have decided to use the participatory method also to involve different actors who may be instrumental for continuing discussions on victims' compensation during the term of the next European Commission and next European Parliament. Indeed, the chosen method allowed for a creation of an informal platform of actors composed of victim support associations, national compensation bodies, representatives of Member States, the relevant services of the European Commission and members of the European Parliament. If the next Commission decides to follow the dynamic proposed in this report, the creation of such informal platform enables the actors involved to continue their work on victims' compensation in line with the objectives and recommendations of this report.
- As the Special Adviser is independent, **all views and recommendations reflected in this report do not necessarily reflect the position of the European Commission or particular members of the Steering Committee**. The main objective of this report is to present to the President of European Commission, Jean-Claude Juncker, personal recommendations that are based on the main expectations of a large number of stakeholders. In particular, this report is without prejudice to any actions that the Commission may take in the area of victims' rights.
- The work leading up to the report was organized in three stages:
 - the **inception stage** (January – April 2018)
 - the **problems identification stage** (May- September 2018)
 - the **recommendations stage** (September 2018-January 2019)
- The discussion on improving victims' access to compensation continued in the course of 2018 during all stages of the report. Major events included, among others, a High Level Conference on and experts' meeting dedicated to compensation in May and in October 2018.

- **The input from different stakeholders is a crucial part of this report.** You will find enclosed in annexes some of their contributions. Numerous discussions with national experts, victims and victim support organisations and their input have contributed to the formulation of problems and recommendations. The role of the Steering Committee was to share the expertise in the particular field of each member and to provide their input to the report. The victim's perspective is present through the report. In particular, the part related to problems would not be feasible without the important support and input from victims and from victims support organisations. The Steering Committee met on five occasions. The comments from the Steering Committee have been vital for this report. Nonetheless, the outcome is an independent report of the Special Adviser.
- In this report, I formulate recommendations for the future policy on victims' compensation and practical advices on concrete problems. **The analysis takes into account the problems expressed by victims and those that emerged from the analysis of national compensation schemes.** The views of victims were gathered for this report by victim support organisations, notably Victim Support Europe, V European and other victim support organisations who conducted questionnaires and gathered victims' testimonies (hereafter "the research by victim support organisations"). The data related to the state of play of national compensation schemes comes from a study of the European Network of Victims' Rights and is based on a series of Member States' questionnaires that were done in the course of 2018 ³(hereafter "the ENVR study"). Moreover, the report also takes into account documents (such as reports, studies) from the European Commission and EU agencies (such as EIGE).
- When it comes to the scope of the report, I looked into the causes underlying the problems that victims face when claiming compensation (such as difficulties in accessing justice) and direct problems (such as lack of information, support, eligibility criteria or procedural hurdles.) Therefore, **the report is not limited to the compensation procedure stricto sensu.** Victims of crime may claim and receive compensation only at the end of a very long process. This process starts with reporting a crime and goes on through different stages of criminal and often additional civil or administrative proceeding to end up with yet another procedure - during which victims may claim state compensation. It suffices that one element goes wrong during one of the stages that precedes the state or offender compensation and victims will not receive their compensation. It is therefore essential that this report tackles not only compensation per se but also the subjects that condition access to a fair and appropriate compensation such as information, training, support services, collaboration between authorities.
- All victims of crime against the person have a right to compensation and should be treated in accordance with this right. However, in order to render this right practically effective, a victim's individual situation and needs must be taken into account. **Therefore, it is important to take into account specific needs of victims according to their own characteristics (gender, child, senior, disabled, cultural and religious needs) or according certain categories of crimes.**

³ The ENVR collected information from the database of the e-Justice Portal, the comparative study prepared by McKenzie on behalf of French Fund of Guarantee (GTIN) and from the ENVR own data collection among 19 Member States who participated in questionnaires. The gathered results cover information from 25 EUMS.

Victims of certain categories of crime have face specific problems that are related to type or nature of the crime. This report has therefore a general and specific and personal approach and explores also in particular whether victims of terrorism, victims of trafficking in human being and victims of gender-based violence have such specific needs and problems and how to respond to them in the course of the compensation process.

- I also acknowledge that children constitute a particular group of victims that requires specific attentions when it comes to their needs, problems and access to compensation. The limited scope of this report did not however allow to explore more in details this important subject.
- There are two main sources of compensation for the victim of violent crime: the offender compensation (OC) and the state compensation (SC). **This report deals with state compensation and offender compensation.** Some Member States rely however also on insurance compensation. This report deals in an ancillary way with this issue. This important topic should however be further analysed with a view to ensure a more consistent approach, harmonisation between Member states and better cooperation with state compensation authorities and judicial authorities. This report doesn't deal with social security benefits.

Firstly, I would like to thank Jean – Claude Juncker for his trust. Secondly, I would like to thank all persons who have contributed to this report. I would like to particularly highlight the special and indispensable role of Katarzyna Janicka-Pawlowska (Team leader - Victims' Rights team in DG Justice) whose intelligence, intellectual rigour, motivation and support have made above all this report possible. She really deserves my particular gratitude.

Particular thanks go to the members of the Steering Committee, whose input has been vital for drafting this report : Elizabeth Pelsez - Interdepartmental Delegate for Victim Support, France; J. Rencki - Director of the Guarantee Fund for Victims(FGTI), France; S. Ramos - DG to support victims of terrorism, Ministry of Home Affairs Spain; M. Mingueza Senior Adviser, Ministry of Home Affairs Spain; J.J. Mesu- Ministry of Justice Nederland; M. Pagazaurtundúa- Member of the European Parliament; M. Vassiliadou - EU Anti-Trafficking Coordinator; A. Levent – Victim Support Europe Director; R. Shrimpling- Policy Officer, Victim Support Europe; A. Dearing- Programme Manager Research- Criminal Law and Criminal Justice, Research & Data Unit, EU Agency for Fundamental Rights; M. A. Ferenczi – professional manager, Association of the European Network on Victims' Rights; A. Verelst – External Expert; F. Rudetzki- Victim and Board Member of the Guarantee Fund France : L. Dolci –Victim and Manager Humanitarian Funds, Office of the UN High Commissioner for Human Rights; S. Valentin-Policy Officer – DG Migration and Home Affairs; J. Heisserer-Interdepartmental Delegation for Victim, Support Head of European and International Relations, Ministry of Justice, France; E. Dimovne Keresztes-DG Home; I. Bellander Todino- Deputy Head of Unit, gender equality, DG for Justice and Consumers; H. Voolma- gender equality, DG Justice; C. Pambianco- gender equality, DG Justice, S. Valentine – victims of terrorism (DG HOME). Gilles de Kerchove was also an additional, efficient and so friendly support via his extraordinary experiences and competences.

I am also grateful to individual victims and victim support organisations who provided a particularly valuable contribution to the report. Last but not least, I would like to thank my two assistants Alketa Selimaj and Sara Marcireau for the assistance they provided during the redaction of this report. They have been so extremely supportive.

I. Introduction: What place for victim's rights in the European area of freedom, security and justice?

A. Human rights-based concept of victimisation

This report is founded on a human rights-based approach to criminal justice and has been inspired by different contributions of the Fundamental Rights Agency. It assumes that victims of crimes against the person have a right to justice and that criminal justice serves to redress – to ‘right’ – the wrong done to victims. If an offender, by committing a violent crime, calls the victim's rights into question, victims can legitimately expect that their legal community comes to the defence of their rights. In light of a right to an effective remedy – in the sense of Article 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights (the Charter) – criminal proceedings assert the victim's rights as much as they preserve the identity of a community of law based on human dignity and human rights⁴. Victims' rights to access to justice, as interpreted by the ECtHR⁵, include the following elements :

- A right to proceedings that aim to identify, convict and punish offenders,
- A right to participate in the proceedings with full fair-trial rights (Article 47(2) and (3) of the Charter)
- A right to be compensated within the framework of criminal justice whenever a victim of violent crime under substantive law is entitled to compensation;

Such understanding of victims' rights to access justice that includes elements of compensation is incorporated into the EU law by the Charter via the Victims' Rights Directive⁶ and the Compensation Directive⁷.

This human-rights approach to victims' rights is also clearly defined in the Victims' Rights Directive – currently the major EU instrument on victims' right. It states that a crime is a wrong and a violation of the individual rights of the victim, and due to this fact, victims are to be recognised and treated respectfully⁸. It means that EU policy has to start from the fact that the offender and, if the offender is unable to compensate, the state owe compensation to victims of crimes against the person for the damages incurred.

⁴For a more comprehensive account of the fundamental rights basis of victims' rights, refer to the second Chapter of the report FRA (2019a).

⁵ ECtHR, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], No. 47848/08, 17 July 2014, para. 149

⁶Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

⁷ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

⁸ See recital 9 of the Preamble to the Victims' Rights Directive

According to FRA⁹:

“The move from a needs-based rhetoric to human rights language changes profoundly the relationship between the victim and the state. The victim is no longer pleading for help on the basis of their vulnerability, pressing needs and deservingness but demanding that the state should take seriously what it owes to the individuals living on its territory and their human rights. The state is no longer in the comfortable and patronizing position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders”.

B. Objectives of Compensation

Under the 2004 Directive on Compensation, *“Crime victims in the European Union should be entitled to fair and appropriate compensation for the injuries they have suffered, regardless of where in the European Community the crime was committed”* (point 6 of the Preamble to the Directive). The Directive sets up the rights of victims of cross-border crimes to access fair and appropriate compensation. The way national authorities develop, implement and understand the right for compensation is left at the discretion of the EU Member States.

The lack of clear guidance and obligations for Member States on how these national systems should be developed results in differences of national compensation systems. Member States differ in the way they see the role of the state compensation system and in the moment that victims can address the state compensation system:

- In most Member States, state compensation is regarded as the ‘last resort’ to offer a financial support, often via lump sums, due to the financial harm caused by the victimisation experience. In such systems, compensation is limited, covering limited, precisely defined and justified expenses made in the wake of the victimisation experience. There, state compensation is sought at the end of the line when all other actors providing financial restitution have failed to provide satisfaction for the victim (e.g. offender compensation, insurance etc.). In many of these Member States procedural and administrative limitations will be put in place to ensure victims first pass by other actors before coming to state compensation authorities (e.g. through condition of court ruling before being able to request state compensation)
- In some EU Member States, state compensation authorities serve as a point of entry for victims seeking financial redress. The French system for instance serves as a buffer between victims and other actors potentially providing restitution such as insurance companies and offenders. This means that victims can address the French compensation authority before seeking financial compensation from the offender or insurance actors. By stepping in at an early stage, the French government aims to reduce the harm caused to victims when seeking compensation for the losses they endured. It is very important however to understand that whilst stepping into the recovery process at a rather early stage countries like France uphold subrogation principles – meaning they will seek restitution for the victim from the other actors like insurance companies after having compensation to the victim.

⁹ FRA (2019), “Justice for victims of violent crime. Part I: Victims’ rights as standards of criminal justice” Luxembourg, Publication office of the European Union. (to be published)

- In addition, there are systems between these two extremes, like, for example in the Netherlands. Here victims are actively supported by e.g. victim support organisations to seek compensation elsewhere as the clear objective of state compensation is to be a 'point of last resort'. However, the compensation authority, if needed, will apply a subrogation principle where they will cover necessary costs (through emergency or other payments) and seek the amount due from insurers and offenders. Whilst being a point of last resort, they consciously seek to reduce the harm faced by victims by stepping in and limiting waiting time, procedural difficulties and secondary victimisation through offering subrogation. To have this system function, the Dutch government invests strongly in facilitating victims to apply and receive compensation from offenders first.

The relationship and complementarity with the wider social (welfare) system influences the way compensation systems are being set up or perceived. Some Member States that have strong social welfare systems like the Netherlands or Sweden conceptualise state compensation as a small piece in a larger puzzle of social services that exist to support the victim recover from the victimisation experience.

Research into definitions upheld by international actors and non-EU countries inspires a wide perspective on financial compensation as one element of a wider approach to Remedy and Reparation of victims. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁰ offer a useful and powerful framework to view financial compensation of victims of crime in the EU as one link in a wider perspective on reparation.

According to International law and international agreements that underwrite the approach to reparation, full and effective reparation should include, as appropriate, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

- **Restitution** consists of measures trying to re-establish, as much as possible, the situation of the victim prior to the violation but in including when needed the irreversible effects of the violent act. It aims at restitution of what is taken. Very rarely victimization has merely reversible consequences.
- **Compensation** is a specific form of reparation provided to victims when replacement or recovery is not possible. This applies for instance for victims of rape or terrorism where the experience, psychological consequence or other cannot be erased. The financial compensation can pertain to pecuniary (monetary) or non-pecuniary losses. Money will be used not to replace but form a monetary substitute for the pre-victimisation status. But money is insufficient to provide a reparation for victims. That is why support services must also be included in a broader definition of compensation.
- **Rehabilitation** is the provision of medical and post trauma or psychological care, as well as additional social services that foster the rehabilitation of a victim.

¹⁰ General Assembly resolution.60/147, annex, paras. 18-23

- **Satisfaction/ Recognition** refers to forms of reparation that include ‘full and public verification of the facts, and formal acceptance of any State responsibility’¹¹. The concept of satisfaction is closely linked to Recognition of victims.
- **Guarantees of non-repetition or non-recurrence** is a form of reparation where governments and actors take the necessary responsibility and actions to protect the victims and reduce the risk of repetition.

As can be seen above reparation efforts can be both individual and collective, financial or not, and a successful reparation strategy entails reparation on both levels. All aspects of reparation are strongly connected and interlinked. Additional efforts on aspect of reparation will unavoidably have an influence on the others. Having a stronger rehabilitation system – with quality medical and psychological services accessible to all – will unavoidable influence the compensation that is required to contribute to the reparation of the harm done by the victimisation.

Compensation for me means that I would have financial security and that I would receive the therapeutic and medical support I need without making ten applications or sue it before a court. And this [compensation] would also give me a feeling that they believe me and that the psychological damage / suffered is actually seen. (interview of a victim¹²)

Compensation is a key element of reparation and its effects go far beyond the financial restitution but feed into rehabilitation, satisfaction and recognition. The report will be based on this broad concept of compensation and will not be limited to the financial compensation.

[Compensation] if done correctly, should have a positive and restorative impact. If it is done badly, it will undoubtedly be a negative factor, producing secondary victimisation and promoting suffering and psychopathological complication.¹³

C. Evolution of victims’ rights in international law and in European law¹⁴

1. International law

Compensation is one of the most important rights of victims of crime. This has been recognised in international and European instruments.

- The victim’s right to access compensation was first recognised by the international community in 1985 when the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for victims of Crimes and Abuse of Power¹⁵.

¹¹ https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-14_en.pdf

¹² Survey organised by victims associations under the Coordination of VSE in the framework of this report .

¹³ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims’ associations from France, Belgium and Spain.

¹⁴ European Parliament “How can the EU and Member States better help the victims of terrorism?”, Policy department for Citizens’ Rights and Constitutional Affairs, September 2017, pp. 64-76, available at : [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU\(2017\)596805_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU(2017)596805_EN.pdf)

Recognising that millions of people throughout the world fall victim to crime every year and that their rights were not adequately recognised, the General Assembly wanted to secure justice and assistance through a range of rights for victims including compensation.

- As a pioneer, the Council of Europe adopted the European Convention on the Compensation of Victims of Violent Crimes in 1983¹⁶. Under the Convention, States parties have the obligation to compensate victims of intentional and violent offences resulting in bodily injury or death.

2. European law

As the international community made progress on victims' rights, the EU started its own path towards an EU area of freedom, security and justice, including in the area of victims of crime.

- The European Union took a first step in the recognition of the importance of compensation for victims of crime with the adoption of the **Council Framework Decision on the standing of victims in criminal proceedings** in March 2001¹⁷. Importantly, the Decision encourages Member States to take appropriate measures to ensure that victims of criminal acts are entitled to obtain a decision on compensation in criminal proceedings. The Decision does not however mention State compensation.
- As a next major step towards establishing European victims' rights, in 2004 the **Compensation Directive** was adopted¹⁸. The Directive imposes an explicit obligation on Member States to have State compensation schemes in place for violent intentional crime, including crime of terrorism. The instrument, additionally includes mechanisms to facilitate compensation claims in cross border cases. According to Article 2 of the Compensation Directive "Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State".
- In 2012, the EU took another important step towards ensuring rights of victims of crime with the 2012 Directive establishing minimum standards on the rights, support and protection of victims of crime (**the Victims' Rights Directive**)¹⁹. This Directive strengthens victim's rights in comparison to the Council Framework Decision from 2001. This horizontal Directive constitutes the cornerstone of the EU victims' rights policy, which is applicable in the Member States since November 2015. The Victims' Rights Directive provides for a set of binding rules for all victims of

¹⁵ UNGA, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985; UN Doc.

A/RES/40/34, available at : <http://www.un.org/documents/ga/res/40/a40r034.htm>

¹⁶ European Convention on the Compensation of Victims of Violent Crimes, ETS No. 116, opened for signature on 14th November 1983, entered into force on 1st February 1988

¹⁷ 2001/220/JHA: Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings

¹⁸ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0080>

¹⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=FR>

all crimes. It includes the right to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. Concerning compensation, it provides for a right to obtain a decision on compensation by the offender within a reasonable time during criminal proceedings and that Member States shall promote measures to encourage offenders to provide adequate compensation to victims (Art.16).

- On 15 March 2017, the European Union adopted Directive (EU) 2017/541 on combatting terrorism (**the Counter-terrorism Directive**)²⁰. Chapter V of this Directive explicitly lays down provisions on protection of, support to, and rights of victims of terrorism. These new rules build on the already existing horizontal EU rules on victims of crime, (the Victims' Rights Directive and the Compensation Directive). The Member States must establish confidential, free of charge and easily accessible support services helping the victims of terrorism immediately after a terrorist attack and for as long as necessary. Concerning compensation, it is required from these support services to assist victims of terrorism with claims regarding compensation which is available under the national law. This Directive entered into application in Member States only in September 2018 and it is not yet fully transposed in Member States. The Commission is closely observing the process.
- Another instrument that is specifically dedicated to victims of a particular category of crime is the 2011 **Anti-trafficking Directive**²¹ on preventing and combating trafficking in human beings and protecting its victims. The Directive sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims. It is based on the human rights approach and gender perspective. It contains provisions on victims' protection, assistance and support, but also on prevention and prosecution of the crime. The Anti-trafficking Directive explicitly states in Article 17 that Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Moreover, Member States must ensure that victims of trafficking in human beings have access without delay to legal representation, including for the purpose of claiming compensation. Member States were required to complete the transposition of the Anti-trafficking Directive by 6 April 2013. All Member States bound by the Directive had communicated their transposition measures to the European Commission. With regard to enacting the EU Anti-trafficking Directive into national laws, the European Commission's 'Transposition report'²² concluded that while there has been substantial efforts by EU Member States, there still remains significant room for improvement in various aspects, including, compensation. The Commission continues monitoring the correct transposition and implementation of the Directive. A number of Commission report, studies and document

²⁰ Directive 2017/541/UE of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0541&from=FR>

²¹ Directive 2011/36/UE of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=en>

²² COM(2016) 722 final

address the matter of compensation to victims of trafficking.²³ In 2017 the Commission issued its Communication identifying further actions to address trafficking in human beings²⁴.

D. State of play and new threats and challenges

With the new thread and challenges, the already extremely high number of victims of crime is expected to increase in the future. Moreover the nature of crime changes and becomes more and more globalised. For particular EU Member States it becomes more difficult to deal on its own with crime prevention and victims' protection.

1. State of play

In Europe 75 million people become the victim of a serious crime every year²⁵. That's 15% of the population, or 200 000 victims every day. One in three women report being sexually or physically abused. In 2016, around 5 200 intentional homicides and over 1,3 million home burglaries were reported. Millions more are being defrauded, robbed or physically assaulted. Eurostat even reports a rise in physical assaults in the last years²⁶. One in five children under the age of 18 in Europe is a victim of sexual violence. In 70-85% of cases, the perpetrator is a person known to the child and part of their "circle of trust".

Concerning victims of terrorism only in 2017, 88 EU citizens were killed, 70 of them in the EU territory and 18 Europeans died in attacks outside the EU's borders. With regard to the victims of terrorism in the period of 2000-2017 there were 1790 victims killed including 740 victims killed in the European Union and 1050 European victims killed outside the European Union. Among the 740 victims killed in the EU, 614 were EU nationals, 117 were of another nationality and 9 unknown nationalities²⁷. The Member State most affected by terrorist acts since 2000 is Spain with 269 victims, including 203 victims of the Madrid attack. Spain is followed by France with 254 victims including 151 victims of the Paris attacks and the United Kingdom with 120 including 67 in London²⁸.

²³ Among others, see the first Progress report (2016) by the European Commission (Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (COM(2016)267 and SWD(2016) 159 final); Second progress report and Staff Working Document (COM(2018)777 final and SWD(2018)473 final); Commission Communication 'Reporting on the follow up to the EU Strategy towards the eradication of trafficking in human beings and identifying further concrete actions

²⁴ (COM(2017)728); the Commission's overview document «EU Rights of victims of trafficking» (2013; available in all EU languages at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_rights_of_victims_of_trafficking_en_1.pdf); Study on Case law relating to trafficking in human beings for labour exploitation (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_case-law_on_trafficking_for_the_purpose_of_labour_exploitation_2.pdf)

²⁵ Analysis carried out in "The Burden of Crime in the EU", p. 70, of results from the EU International Crime Survey (EUICS) 2005 (www.europeansafetyobservatory.eu)

²⁶ EUROSTAT (April, 2013). EU citizenship - statistics on cross-border activities. Retrieved September 22, 2015, from http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_citizenship_-_statistics_on_cross-border_activities

²⁷ Maria Teresa Pagazautundúa, « Black and white paper on terrorism in Europe: Victim's data and status. In defence of freedom and security against fanaticism in the 21st century », ALDE, Brussels-Madrid, May 2017

²⁸ Maria Teresa Pagazautundúa, « Black and white paper on terrorism in Europe: Victim's data and status. In defence of freedom and security against fanaticism in the 21st century », ALDE, Brussels-Madrid, May 2017

Attacks in Paris (2015), Brussels, Nice, Berlin (2016), London, Barcelona (2017) and Strasbourg (2018) demonstrate the devastating impact of jihadist/extremist terrorism in Europe and the high number of cross border cases²⁹. However, it is necessary to recall that these figures concern only the victims who died during these attacks but this number can be largely multiplied if we count the number of injured or the relatives of the victims.

There is also an underestimation of the actual number of victims. Many violent crimes are unreported with, for example, studies pointing to only 10% of child abuse cases reported to the police³⁰. 20 532 victims of trafficking in human beings were registered in the 28 EU Member States over the two years 2015 and 2016. Trafficking has a strong gender dimension: 68 % of registered victims for all forms of exploitation were female. Trafficking for sexual exploitation remains the most widespread form (56%) within the EU³¹.

2. New threats and challenges

a) Increased mobility of persons

It is unquestionable that the European area of freedom security and justice has brought great advantages to the EU citizens. It brought however also new challenges and new European responsibilities vis-à-vis EU citizens. The principle of free movement within the European Union has led to an increase in the number of individuals working, studying or travelling abroad. Around 13.6 million EU citizens live for diverse reasons in a Member State that is not the Member State where they were born in³². Over the last few decades, also the crime is becoming increasingly globalized, posing particular challenges to national criminal justice systems³³. With the increased mobility of people in the EU and the increasingly globalized nature of crime, more and more people are becoming victims of crime in a Member State other than their own.

²⁹ Terrorist attack	Number of deceased, foreign nationals
Paris, France, 13 th November 2015	130 deceased, 29 foreign nationals ²⁹
Brussels, Belgium, 22 nd March 2016	32 deceased, 18 foreign nationals ²⁹
Nice, France, 14 th July 2016	86 deceased, 43 foreign nationals ²⁹
Berlin, Germany, 19 th December 2016	12 deceased, 5 foreign nationals ²⁹
Westminster, United Kingdom, 22 nd March 2017	6 deceased, 2 foreign nationals ²⁹
London, United Kingdom, 3 rd June 2017	8 deceased, 7 foreign nationals ²⁹
Barcelona, Spain, 17 th August 2017	15 deceased, 11 foreign nationals ²⁹

³⁰ http://www.coe.int/en/web/portal/-/18-november-first-europe-wide-action-day-to-end-sexual-abuse-of-children?redirect=http://www.coe.int/en/web/portal/home?p_p_id=101_INSTANCE_DibKFqnpE518&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=2

³¹ It is followed by trafficking for labour exploitation (26%). 95 % of victims of trafficking for sexual exploitation were women and girls. 23% of registered victims who were trafficked for sexual exploitation were children. Children were almost one quarter (23%) of registered victims of trafficking. Nearly half (44%) of the victims were citizens of the EU, out of which half (22%) are citizens of other EU member States; and just over half (56%) were non-EU citizens. 22% of registered victims of trafficking were trafficked internally within the same Member State. Given the complexity of the phenomenon, there are solid grounds to expect that the actual numbers of victims of trafficking in the EU are indeed substantially higher

³² EUROSTAT (April, 2013). EU citizenship - statistics on cross-border activities. Retrieved September 22, 2015, from http://ec.europa.eu/eurostat/statistics-explained/index.php/EU_citizenship_-_statistics_on_cross-border_activities

³³ Letschert, R. M., & Groenhuijsen, M. S. (2011). Global governance and global crime: Do victims fall in between? In R. M. Letschert, & J. J. M. Dijk (Eds.), *The new faces of victimhood*. (pp. 15-40). Dordrecht: Springer.

b) The rise of Terrorist threat³⁴

Europe has faced a high and evolving terrorist threat over the last decade. While this terrorism threat is shared across the EU, there are differences in the threat level faced by the different Member States. Radicalisation which may be leading – as seen in several cases - to violent extremism and terrorism is not a new phenomenon. Nevertheless the process is taking place at an alarming speed and scale. Social media as well as a combined interplay of other factors such as sense of injustice and discrimination, identity crisis, social exclusion participate in radicalisation mechanisms at a much faster pace than previously experienced. With the changing threat of terrorism in Europe, new challenges for the EU comprises securing the rights of cross border victims which represent a significant percentage of fatal casualties³⁵.

Cyberterrorism presents a new and ever-growing threat in the realm of terrorism. CEPOL defines cyberterrorism as ‘the use of computers and/or related technology with the intention of causing harm or damage, in order to coerce a civilian population and influence policy of target government or otherwise affect its conduct’. In a similar manner, NATO defines cyber- terrorism as ‘[a] cyberattack using or exploiting computer or communication networks to cause sufficient destruction or disruption to generate fear or to intimidate a society into an ideological goal’³⁶.

c) Cybercrime

Cybercrime consists of criminal acts that are committed online by using electronic communications networks and information systems. It includes among others harassment, hate speech, child abuse, trafficking of terrorism .Cybercrime poses a real threat for the EU citizens and residents. In recognition of this, Several EU legislative actions already contribute to the fight against Cybercrime. These include the 2011 Directive on combating the sexual abuse and sexual exploitation of children and child pornography as well as the 2013 Directive on attacks against information systems.

d) Climate change

1.8 million migrants have come to Europe since 2014. Although recent figures show that the number of migrants and asylum seekers entering the EU has decreased since 2015 – 2016. In many parts of the world and in Europe, people are suffering from growing environmental disasters such as droughts, floods, heatwave and other extreme weather. Due to the effects of climate change, the scale of voluntary or forced environmental migration to Europe is likely to increase.

e) Trafficking in human beings (THB)

Trafficking in human beings is yet another current thread to our society. This is also a highly profitable form of crime. The annual profits from all forms of trafficking in human beings are estimated at EUR 29.4

³⁴ European Parliament “How can the EU and Member States better help the victims of terrorism?”, Policy department for Citizens’ Rights and Constitutional Affairs, September 2017, pp.17-19

³⁵ Terrorists often target densely populated, touristic area

³⁶ Centre of Excellence Defence Against Terrorism, ed. (2008). Responses to Cyber Terrorism. NATO science for peace and security series. Sub-series E: Human and societal dynamics, ISSN 1874-6276. 34. Amsterdam: IOS Press. p. 119. ISBN 9781586038366. Retrieved 2018-07-22. The current NATO Definition of cyber terrorism is: ‘A cyberattack using or exploiting computer or communication networks to cause sufficient destruction or disruption to generate fear or to intimidate a society into an ideological goal.’

billion globally³⁷. Europol equally highlights the profit generated by trafficking of children³⁸. Driven by considerable profits and a very complex interplay of supply and demand, trafficking involves a complex chain of actors who are knowingly or unknowingly involved.

Moreover, trafficking in human beings is a transnational crime, often involving cross-border movement and exploitation of victims, where for detecting, investigating and prosecuting the crime, there is need for cross border cooperation by law enforcement and judicial authorities, including joint law enforcement actions for following the money involved in the crime and seize and confiscate the criminal proceeds.

f) Racism, homophobia, sexism, gender based violence

Moreover the EU is confronted with new challenges such as populist and extremist movements manifesting in sexist, homophobic and racist hate speech or violent acts³⁹. The fear of migration and terrorism increased the number of victims of violent acts based on origins or religious beliefs. The EU is also confronted with resistance to gains made in women's and girls' rights. After decades of progress in terms of gender rights, several parts of Europe are currently facing new waves of resistance to progressive gender equality, equal pay, equality in decision-making;

The increase in social movements of discontent in Europe can also lead to an increase of violence and therefore of victims of violent acts as we saw recently in France.

³⁷ Europol's Report on Trafficking in Human Beings, Financial Business Model (2015).

³⁸ Europol, Situation report (2018), Criminal networks involved in the trafficking and exploitation of underage victims in the European Union, at: <https://www.europol.europa.eu/publications-documents/criminal-networks-involved-in-trafficking-and-exploitation-of-underage-victims-in-eu>

³⁹ FRA(2014), "Violence against women: an EU-wide survey". Main results reports; FRA (2017) "Second European Union Minorities and Discrimination" Survey-Main results; FRA(2018), "Experiences and perceptions and anti-Semitism, Second survey on discrimination and hate crime against Jews in the EU"

II. Problems faced by victims

As we saw in the introduction, victims have general and specific needs relating to their own situation and characteristics or to the type of crime committed. In a similar way, they face general problems but also specific problems. Annex I of this report gives a more detailed version of the general and specific victims needs and Annex II describes more deeply the general and specific problems faced by the victims.

A. General problems

1. Lack of/Access to information and to guidance

Article 4 of the Victims' Rights Directive provides victims with a right to receive information from the first contact with a competent authority. Victims should receive different kind of information about their rights, including how and what condition they can access compensation. The extent or detail of information should vary depending on the specific needs and personal circumstances of the victim.

Moreover, Article 3 of the Victims' Rights Directive states that victims have a right to understand and to be understood. Research of victims support organisation indicate however that victims are not sufficiently informed of their rights to claim compensation, on how to proceed through a complex judicial or administrative system. Moreover information is either difficult to understand or is not provided in a language the person knows. The reasons for the information deficit from which crime victims suffer are the followings;

a) The lack of information and clear guidance

The result of the data collection by the ENVR (the ENVR study) shows that Member States apply various forms of providing information on compensation. The most common way is when victims are informed by the police (orally and by leaflets), or they are informed online. Additional forms of providing information are: through prosecutors, courts, NGOs, other professionals (who can be in contact with the victim e.g. hospital staff, women shelters) and embassies. On the basis of the data collected by the ENVR, in 14 Member States⁴⁰ there is a hotline which can give information on compensation. However not all of these Member States dedicate their hotline specifically to compensation. The ENVR study however underlines – as a good practice-that the online application form is now available in 17 Member States⁴¹. Another positive trend is the availability of online information about compensation in English. Such information is currently available in 14 Member States⁴².

⁴⁰ "Comparative data collection on compensation schemes of member states" Information appears in this data collection is from the database of e-Justice portal, from the comparative study prepared by McKenzie on behalf of FGTI and from data provision by ENVR experts, available in AT, BE, CRO, DE, FR, HU, IE, LUX, LV, MT, NL, PT, SE, UK

⁴¹ According to ENVR data collection AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HR, HU, IE, NL, PT, SE, SK

⁴² According to ENVR data collection E, BG, CY, CZ, DE, ES, FI, FR, CRO, IE, LU, PT, SE, SI

b) The failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them

In accordance with the Victims' Rights Directive, national authorities (notably the police) and others having initial contact with victims are under a duty to provide information about compensation. In a few Member States, there is no legal obligation on authorities involved in the criminal proceedings to verify whether victims are aware of their rights to claim or apply for compensation. One reason for this situation is the lack of appropriate training of the frontline staff.

c) Information on compensation for victims is not available

Under the Victims Rights' Directive information should be provided in different formats– corroborating with scientific studies, victims' testimonies and practical expertise highlighting that information for victims needs to be offered in different forms and a number of locations to actually reach victims⁴³. In many Member States information for victims is only available in one format or very limited number of locations. Some Member States do not have a website dedicated to providing victims with information on compensation. In other countries, the website is dedicated to victims of terrorism⁴⁴. When it comes to the cross-border compensation, the information is often not available in other languages than the official language of the country.

d) Lack of assistance in accessing information

According to the research by victims support organisations victims are often not informed about the support they can receive from victim support organisations. Such support is crucial for victims.

I would not have managed alone — for sure, because the letters from the authority were intimidating. You have got the feeling not to be taken seriously. The application itself was already difficult; I couldn't have filled in the form alone and it was a burden. Without the support of WEISSER RING and my lawyer, I would already have given up, because the written notes from the authority were not friendly at all.⁴⁵

When it comes to offender's compensation – judicial authorities should provide information during criminal proceedings and in particular at the early stages of the proceeding to ensure that victims do not miss their deadlines to apply for compensation from the offender. Too often victims are not informed about the possibility of claiming such compensation (often within limited deadlines) by the relevant judicial authorities. When it comes to cross –border aspects, victims' access to information about compensation is even more difficult. Therefore governments and competent authorities should put extra efforts to overcome hurdles that characterise cross-border victimisation.

⁴³ Guidelines VR directive (VSE, Commission)

⁴⁴ Website of the Office of Victims of Terrorism – Direction General to Support Victims of terrorism at the Ministry of Home Affairs: www.interior.gob.es

⁴⁵ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims' associations from France, Belgium and Spain.

e) Lack of quality of information

As indicated by the research of victims support organisations, too often information is very difficult to understand for a victim who has no background knowledge in criminal proceedings. Another issue is the fact that information is sometimes inaccurate or contradictory. Contact details, eligibility criteria and forms are not always up to date and available.

f) Information is not provided in accordance with victims' individual needs

The interviews with victims and compensation authorities reveal that there is an important mismatch between what is perceived as 'a simple and accessible language' and the reality.

g) Lack of guidance and training

In general, Member States don't invest enough in professional guidance and trainings for the judicial authorities and police, about the victims' rights and needs, the way to behave, to communicate, to support, to inform. Criminal judges still should be convinced that victim compensation is an important part of criminal justice. The appropriate information is not always given by the police. Embassies, consulates are not enough prepared in case of terror attack with a large number of nationals victims. Support services need also to be updated via professional psychological or specialized guidance.

Even those people who need to provide information don't understand how it works. Sometimes a police officer or even lawyer does not even understand the difference between offender and state compensation. If they – who are supposed to explain this to victims- don't understand, how can victims?' (interview victim's compensation expert⁴⁶)

2. Problems concerning State compensation

a) Low amounts of compensation

The survey by victim support organisations demonstrates that delays, lack of emergency payments, and low amounts of compensation present a major problem for victims. In particular, the majority of respondents to the surveys by victims support associations perceive victims' compensation as not sufficient⁴⁷.

The ENVR Comparative Data Collection on Compensation Schemes (the ENVR study) also shows that there is a great diversity in the amount paid by different EU Member States. It varies from a couple of thousands of Euros paid to dozens of millions euros in other Member States. Even if taking into account obvious differences between the EU Member States such as the population and the GDP the differences in the amount of the awarded compensation are very important.

⁴⁶ Survey organised by victims associations under the coordination of VSE in the framework of this report .

⁴⁷ When it come to the financial losses, 56.3% of respondents stated that the compensation was usually not sufficient. According to 37.5% of respondents it was sometimes sufficient. With regard to psychological harm, 31.3% respondents said that victims never receive sufficient compensation, and 31.3% found that the compensation is usually not sufficient

Regarding the amount of payment, in most Member States it is determined on a case by case basis. Compensation can be paid in all the involved Member States in a single payment (lump sum). Moreover it is available in monthly instalments in 8 of the researched states⁴⁸.

b) Restrictive eligibility criteria for state compensation

Eligibility criteria for state compensation define what and who is compensated. According to the ENVR Comparative Data Collection on Compensation Schemes, the types of damages for which state compensation is paid in Member States vary depending on country⁴⁹. Several Member States compensate medical costs and loss of earning during the medical treatment. Some Member States also compensate psychological damage⁵⁰, that often covers⁵¹, long term individual needs such as long-term psychotherapy or, adaptation of housing. Most of Member States cover funeral costs⁵². As regards stolen or damaged property, 7 Member States pays state compensation⁵³. Additionally, Finland and France compensate stolen or damaged property under certain conditions.

In some Member States third country nationals may be excluded from the scope of victim compensation schemes. Also extremely restrictive eligibility criteria often result in serious limitation to effective access to compensation. For example, in 11 Member States victims of crime with a criminal history may not be eligible for compensation, (depending on the type and time of the committed crime)⁵⁴.

Most violent crimes such as homicide, sexual offences and assaults are today covered in all Member States. But variations in the coverage of violent crime compensated are viewed as 'unfair' by victims. In particular, when it comes to consideration of what constitutes a violent act – there are still great differences among the EU Member States. Other criteria preventing the victims from obtaining compensation in cross-border cases are the differences in limitations periods and in evidential requirements.

Our law is filled with restrictions for victims to be eligible for compensation. It seems to be the intention of the lawmaker is to give less and less money. In that way restricting the rights of victims. - Interview victim support expert⁵⁵

c) Lack of emergency payments or upfront payments

Only a few Member States grant to the victims emergency payments in few days or weeks after the violent act to help the victim to face the first costs (funerals, loved ones travels, child care..). We have the same situation regarding upfront payment during the judicial proceeding in order to partly compensate the victims before the judicial decision concerning the perpetrator.

⁴⁸ According to ENVR data collection AT, DE, ES, FI, FR, HU, PT, SE

⁴⁹ Data collection by ENVR on Member State compensation schemes

⁵⁰ According to ENVR data collection, except BG, CRO, IE

⁵¹ According to ENVR data collection, BG, SI, SK

⁵² According to ENVR data collection, Except CZ, PT, SI, SK

⁵³ BE, HU, IT, LUX, MT, PL, SE

⁵⁴ European Commission > EJM > Compensation to crime victims (factsheets by country)

⁵⁵ Survey organised by victims associations under the coordination of VSE in the framework of this report .

d) Lack of extended notion of reparation in kind

The practice of arranging -in parallel with the financial compensation-reparations in kind (free support for professional reintegration, mobility, trauma, or childcare or special practical support) is not included in the definition of state compensation.

e) Limited compensation resources of some Member State

According to the ENVR research, most state compensation schemes are financed from the state budget. Ireland noticed that there is annual limit on the amount of compensation that can be paid. Nevertheless, most Member States have a ceiling of the amount that can be paid in a single case with the exception of Austria, Ireland, Germany, and, in case of major crimes or serious injury, France. In France, as an alternative scheme to the state budget, contribution by insurance contracts exists. The amount paid out by Member States for state compensation varies significantly.

3. Problems concerning Offender compensation

It is essential that the perpetrator of the act of violence is prosecuted and convicted as well as compensates his victim. Nonetheless, very often the punitive element of compensation is not guaranteed since the offender does not have the means to compensate the victim or the execution of the judgment imposing the compensation is too difficult for the victim.

It means that even after a very long and challenging process leading to the judgment imposing the obligation on the perpetrator to compensate, the victim is often not compensated (or fully compensated). This is mostly due to:

a) Lack of financial means to compensate the victim

Offenders, especially those convicted for violent crimes, often come from low social-economic backgrounds. This means that they are potentially unemployed and on low incomes or do not possess capital nor property with which they could pay the compensation. According to the calculations based on Eurostat⁵⁶ data, only about 8.5% of the guilty offenders of a violent crime end up being fined.

b) Difficulties in the enforcement of compensation decision

This is partly due to the absence of or a lack of obligations on Member States to assist victims in enforcing compensation from offenders. In only a few Member States authorities enforce the compensation decisions on behalf of the victim at no cost for the victims. In some countries such upfront payments are however conditioned⁵⁷.

c) Lack of systems of compensation to the victims as a criminal sanction

The option to put criminal sanctions as a pressure on the offender to make payments to the victim (compensation in lieu of punishment) is rarely used by the criminal courts in the Member States (It is used in Germany).

⁵⁶ Sources: European Sourcebook of Crime and Criminal Justice Statistics – 2010, Eurostat

⁵⁷ For instance In France, the victims are entitled to receive part of the compensation awarded for minor crimes.

4. Procedural obstacles: Lengthy, complex and costly procedures that lead to victims being discouraged from claiming compensation

a) Interdependence between state compensation and offender compensation

The ENVR data shows that most of the 25 Member States for which this data is available, requires that crime must be at least reported in order to claim state compensation. The end of a police investigation was reported as a condition of state compensation in 9 Member States out of 12 Member States for which the data has been collected, BE and NL reported that the prosecution of the reported criminal offence is also a condition to claim state compensation. The ENVR research scrutinised the issue of advance payment of state compensation to the victim. The advance/upfront payment is available in several countries⁵⁸. Moreover, in some Member States⁵⁹ compensation or emergency compensation can be received directly after the crime, though it can be restricted to some kind of costs. In countries where the upfront payment is ensured, the authorities need to face the issue of risks of double payment-how the victim should report if the damage is compensated later from another source(s).

In order to seek offender compensation a victim may have to submit legal forms or make an application to the court depending on the jurisdiction involved. The victims' situation can be also complicated if no one is found guilty or the case is thrown out on a legal technicality. There is provision in some jurisdictions for state compensation to be awarded where the offender is not identified or has not been apprehended⁶⁰. If victims do not report a crime, they are not entitled to seek compensation. These are often the most vulnerable victims, such as children, undocumented migrants, homeless, trafficked victims to name a few. They are arguably the most in need of emergency compensation.

b) The costs of procedures to obtain compensation are too high for victims

In some Member States administrative fees are charged for applications for state compensation (e.g. from 9 € to 100 €¹⁷⁰). According to the ENVR research, state supported legal aid for victims is available in several Member States⁶¹ under specific conditions set up by law refer to receiving legal support⁶².

It has to be mentioned that Victim Support Services or other associations/funds provide assistance to victims in compensation procedures e.g. in filling out the application form, legal assistance. According to the data reported by Member States, there is assistance for victims with particular needs in AT, DE and ES. In some Member States the financial situation of the victim can affect the eligibility for compensation. E.g. in HU the income threshold is a general eligibility criterion, in HR in the case of compensation for loss of maintenance, in NL in case of additional compensation.

⁵⁸ According to ENVR data collection, AT, BE, ES, IT, FR, LT, LU, MT, PL, PT, UK in DE, FI, NL under specific conditions (see Data Chart Table 3B)

⁵⁹ According to ENVR data collection, AT, BE, FR, HU, UK, in FI, LU, NL under specific conditions

⁶⁰ Example: SE, SK.

⁶¹ According to ENVR data collection, AT, BG, DE, FI, FR, HU, LU, PT, SK

⁶² Data collection by ENVR on Member State compensation schemes

c) Slow procedures and lack of respect by the compensation authorities of the compensation decision deadlines

According to the victim support organisations survey, victims often receive their compensation several years after the crime was committed⁶³. In some Member states, there are no concrete deadlines to be compensated, and when there are deadlines, they are not always respected. Only few cases are closed and compensated in a state compensation scheme within the first 12 months and 50% after 24 months. The positive exception here is France, where almost 60% of cases are closed within a year.

d) Restrictive time limits to apply for compensation

The deadlines for claiming state compensation vary in the Member States. Some Member States count the starting point from the date of the crime (e.g. AT – 2 years from the crime retroactively, CY - 2 years from the date of death or the occurrence of the offence, HR - 6 months from offence, HU – 3 months from the offence. LU- within two years of the offence, NL- 10 years after the offence took place, PT- one year from the commission of the offence). In the countries where the deadline is relatively short to apply for compensation, the time limitation can be extended for different reasons (e.g. in case of incapacitation for applying, if the offender is prosecuted or if the victim was minor at the date of the offence). Also a starting point from which the compensation can be claimed, differs greatly among the Member States⁶⁴; (For more details see Annex.)

e) Refusal because of incompleteness of file

According to the survey by victims support organizations, over two thirds of compensation authorities cite incomplete files as one of the main reasons for not-granting compensation. Incompleteness of files is often related to aspects like missing of a signature, missing a date missing document or a lack of translation⁶⁵. According to the ENVR data collection, several Member States accept other languages during the compensation process. Some assisting authorities cover the costs of t translation of the compensation form. If interpretation is necessary FI, FR, HR, HU, IE, LU, PL and SE bear the costs of interpretation. Translation of supporting documents or evidence is covered in at least 7 Member States⁶⁶.

f) Lack of transparency of the decision-making process

According to the survey done by victim support organizations, the criteria for compensation in their Member State, many respondents said it was not at all transparent or easy to understand.

⁶³ In a majority of Member States, crime victims can only obtain State compensation after the court judgement and the failure to recover compensation awards from offender. Only in a third of the Member States can the victims obtain the State compensation otherwise

⁶⁴ Data collection by ENVR on Member State compensation schemes - for some – this is the date of the final judgement (e.g. BE 3 years from final decision or closure of the case, FI- 3 years from judgement, 10 years from the offence if there is no judgement, SE- 3 years from judgement/close of investigation/children may file claim till the age of 21, SK- 1 year from validity of judgement) or decision ending procedure and in other Member States there is no time limitation (e.g. DE – generally no time limitation, FR – no time limit in case of justifiable reason

⁶⁵ CBC report Victim Support Europe

⁶⁶ According to ENVR data collection, AT, CZ, DE, EL in outgoing cases, FI, HU, LU

g) The limited use of alternatives to judicial proceedings

Alternative approaches to seek compensation from the offender include the use of mediation and restorative justice. In addition to acting as a form of compensation, these approaches bring extra benefits such as enhancing the victim's re-adaptation into society.

h) The limited scope for review of the compensation decision

This may have the effect of discouraging potential claimants and/or leading to situations where clear principles and procedures are not applied. State Compensation regimes do not allow for a review of the decision on compensation in some member states.

5. Cross-border and international victimisation

a) Low number of cross-border compensation claims

Member States reported a dramatically low number of cross-border cases⁶⁷. 10 countries provided data regarding cross-border cases during the years 2015, 2016 and 2017: altogether these States managed 602 cases during the three years (from which 541 were reported by AT and DE). The low number of cross-border cases can be due to lack of awareness, lack of available information, language barriers including the costs of translation and the lack of possibility of filing claims directly with the national authority-though there is compensation system established at national levels and even if the victim has information on compensation, he/she cannot easily access to his rights as it is not possible in all Member States to file cross-border claims directly with the national deciding authority.

b) Lack of collaboration across Member States

Member States⁶⁸ reported a dramatically low number of cross-border cases. 10 countries provided data regarding cross-border cases during the years 2015, 2016 and 2017: altogether these States managed 602 cases during the three years (from which 541 were reported by AT and DE). The low number of cross-border cases can be due to lack of awareness, lack of available information, language barriers including the costs of translation and the lack of possibility of filing claims directly with the national authority-though there is compensation system established at national levels and even if the victim has information on compensation, he/she cannot easily access to his rights as it is not possible in all Member States to file cross-border claims directly with the national deciding authority.

The 2004 Compensation Directive stipulates the need for regular meetings of national contact points. All national contact points interviewed strongly applaud promotion of these meetings. The benefits of regular meetings are manifold 1) Bring national authorities together to discuss European policy and legislation on Cross-border Compensation; 2) Promote building of relationships between National Compensation Authorities which in its turn facilitates further collaboration; 3) Offer a forum to ask questions bilaterally on procedures to claim for compensation and specific cases; 4) Share good practices on cross-border compensation procedures, information provision and collaborations.

⁶⁷ Data collection by ENVR on Member State compensation schemes

⁶⁸ Data collection by ENVR on Member State compensation schemes

Next to collaborations within EU-wide network, compensation authorities strongly value and appreciate good bilateral contacts and information sharing as a foundation for collaboration on cross-border compensation. Bilateral or trilateral visits can promote collaboration between countries who share many cases. It would more moreover facilitate and could even decrease costs of collaboration. Surely, promotion for national contact points to develop and establish themselves as strong networks requires funding. In previous years less initiatives (or funding) for facilitating meeting of compensation points has dwindled. To reinforce the network appropriate investment, coordination and sense of initiative is needed. Cross-border collaboration of compensation authorities should be promoted.

The costs of weak collaboration can be much greater on the long run both for governments and victims. A reinforced network can improve collaboration and invite all Member States to engage and use the rights stipulated in the EC Council Directive on compensation. Currently, some Member States have stepped away from using the provisions in the EC Directive as they feel assisting victims in claiming compensation abroad is more harmful than positive for the victim's well-being.

6. Lack of sufficient number of professional and multidisciplinary free support services in the Member States able to meet different general and personalised victims' needs

While in the last few years, we have witnessed a strengthening of the number, professionalism and multidisciplinary aspect of victim services, whether public or associative, there are still many shortcomings.

In many countries victim support services do not act proactively. They are waiting for the victim to contact them. Yet many victims have neither the knowledge nor often the strength or the courage to approach a service. There are very few people with referrals assigned by victim to coordinate the response to all of their needs. There is still not enough of support services that would provide immediate psychological and practical support (arranging the displacement of loved ones, childcare, etc.). The provision of services to victims does not take sufficient account of the victims' individual needs related to the characteristics of the person, his environment and the type and nature of crime.

In addition, in many Member States, there is not sufficient financial support to ensure proper functioning of victim support services. National support services often lack of the expertise (in particular when it comes to specific needs of victims such as post trauma treatment and accompanying towards resilience and self-development).

7. Insurance

Insurance companies are an important compensation actors that we cannot ignore. The main problems faced by the victims are, among others, a lack of victims' friendly procedure and respectful treatment, payment deadlines, complex and rigid expertise systems, non-harmonised legislations between Member States, national disparities concerning expertise, procedures, terrorism coverage, lack of sufficient cooperation with the compensation authorities, additional and duplicating formalities.

B. Specific needs and problems of victims of certain categories of crime

Victims of certain types of crime have specific needs and correlated specific problems that are related to the type and nature of a particular crime. These needs and problems might not necessarily differ in nature from the needs and problems of victims of other crimes. They differ rather in a degree or possibility for implementation⁶⁹. Victims of certain types of crimes, such as gender-based violence, trafficking in human beings, terrorism or homicide may have special requirements within the basic needs of other victims of crime.

Understanding the specific needs and problems of each group of victims is crucial to ensuring that every victim is supported, informed, compensated, and protected in the way they need to be⁷⁰.

1. Terrorism

As a starting point for addressing the specific needs and problems of victims of terrorism, we must first define exactly who is a victim of this crime. The effects of a terrorist attack reach not only direct victims but also family members, first responders, witnesses and entire societies. At the same time, it is important to recognise that the circles of impact are different. This means that the definition of victim may be narrow for some purposes, such as criminal proceedings or compensation, whilst wider for other issues. In terms of compensation, we see that this is usually limited to the direct victims and close family members. The report of the European Parliament “How can the EU and Member States better help the victims of terrorism?”⁷¹ summarises perfectly the specificities of the victims of terrorism:

Firstly, terrorism aims to harm individuals as representatives of the larger society, the state or values. Victims are attacked as symbols of the state, which is reflected in the social and psycho-logical impact in the individual victim.

Secondly, while the majority of crimes will leave a mark on victims, the impact is largely limited to immediate family members, rarely to first responders and only exceptionally on the broader community. This broader impact will usually happen in particularly serious instances, or for example when victims are public or important figures.

Research confirms the protective factor of social support in the psychosocial well-being of an individual that lived through a traumatic event. However, in the case of a terrorist attack, individuals and professionals in a social environment are impacted as well and sometimes not able to provide support to the victims as they would to victims of other types of crime.

Thirdly, terrorism leaves chaos in its wake, often providing challenges to first responders as well as causing daily life to take a halt. After the Brussels attacks, the city went in lockdown for a few days, preventing life to return back to normal in the city, while shops, restaurants, schools and administrative buildings were being shut down. This is uncharacteristic for most other types of crime, yet strongly affects individual victims of terrorism.

⁶⁹ R. Letschert, I. Staiger and A. Pemberton (Eds.), *Assisting Victims of Terrorism – Towards a European Standard of Justice*, 2008, p. 13

⁷⁰ In this sense see [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU\(2017\)596805_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU(2017)596805_EN.pdf)

⁷¹ European Parliament “How can the EU and Member States better help the victims of terrorism?”, Policy department for Citizens’ Rights and Constitutional Affairs, September 2017, pp. 26 to 57

Fourth, terrorism and its victims become an immediate news story, with victims unwillingly at the centre of attention. More violent attacks will attract more attention, but seemingly victimless and failed incidents related to terrorism get broadly reported and have the potential to victimise

The specific needs and problems of victims of terrorism include the following⁷² :

- **Recognition:** is one of the most expressed needs in the category of terrorism; it also represents a need which is uniquely complex to this type of crime. Unlike in most other violent acts, the victim of terrorism was not personally attacked but as a symbol of the state and society. Lack of recognition from the state and from the society has negative impact on the healing process of victims of terrorism. Therefore; recognition should be associated with remembrance and commemoration. An example of recognising a victim of terrorism can be seen through the National Recognition Medal for Victims of Terrorism in France⁷³, and the Royal Order of Civil Recognition for Victims of Terrorism in Spain⁷⁴.
- **Respectful treatment:** victims of terrorism attract important media attention, which can be notoriously insensitive, often exploiting the victims' personal experience, which may lead to secondary victimisation. With this in mind, there is a dual need for victims of terrorism to be supported when dealing with the media, but also for the media to act respectfully and sensitively in their reaction to the event.
- **Access to information:** applies to all victims but in case of terrorism, which often involves mass-victimisation, responsible services get quickly saturated in the aftermath of an attack. This may induce miscommunication, incoherent and uncoordinated responses from mainstream services. Hospitals, police authorities, embassies and other organisations should aim to provide a streamlined response offering clear, correct and sensitive. In addition, victims of terrorism regularly express their need for truth. They seek to understand what happened, why, and by whom. Having honest information about the events they experienced can help victims in their recovery.

Victims require personalised information, and not only through emails or online. Information must be provided on cases by case, in person, with enough time for explanations and respectful treatment. A single contact person in order to avoid the need to re-explain several times, and someone who coordinates. – Victim interview testimony⁷⁵

- **Specialised support.** Victims may need support in the clinical sense of the word from psychological, medical and social support, both in the short and long-term. When it comes to psychological support, victims of terrorism are specifically prone to post-traumatic syndrome, which requires attention of specifically trained psychologists. It is also extremely important that such support arrives immediately after a terrorist attack.

⁷² European Parliament "How can the EU and Member States better help the victims of terrorism?", Policy department for Citizens' Rights and Constitutional Affairs, September 2017 available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU\(2017\)596805_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU(2017)596805_EN.pdf)

⁷³ 'Médaille nationale de reconnaissance aux victimes du terrorisme'

⁷⁴ Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo'

⁷⁵ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims' associations from France, Belgium and Spain.

- In addition to general support, many victims of terrorism find the greatest comfort and help through their own peers – those have been through the same or similar experience.

According to a survey conducted by victim support associations among victims of terrorism⁷⁶, the most highlighted victims' needs include access to psychological support and access to financial assistance. When it comes to psychological support, most Member States do not offer free-of-charge psychological follow-up.

Moreover, those who offer some level coverage often limit this to several sessions, falling short of what victims actually need. This is therefore a necessity which victims believe should be covered by compensation. The psychological consequences faced by victims and indirect victims of terrorist attacks is well known requiring that victims of terrorism receive immediate, continued and tailored therapy.

Some victims may not develop signs of trauma until many years after the attack, especially in cases of Post Traumatic Stress Disorder. In this light, victims highlight the importance of financial intervention for psychological treatment not only in the immediate aftermath of an attack, but for as long as it is necessary. Psychological trauma is often accompanied by wide-reaching economic consequences, including; adaptation of living arrangements, reduced earnings due to loss of productivity through work absence and/or early retirement, greater probability of divorce, cost of medication, hospitalisation and additional therapy sessions etc. Victims repeatedly referred to the need for immediate financial assistance under the form of an emergency payment to cover loss of earnings, medical costs, and rehabilitation expenses immediately after an attack.

Other problems highlighted by victims in the survey include: lack of recognition and acknowledgment of their victims' status (this includes lack of recognition of different forms of damages, such as loss incurred and the continued psychological trauma which victims of terrorism experience daily); and lack of practical support and assistance (such as assistance with the administrative process, professional adaptation, on-going support for translating documents, legal advice).

Cross border victims of all crimes face increased difficulties to access compensation in comparison to their resident counterparts. Cross border victims of terrorism also face additional obstacles due to the nature of the crime. Since 1980, 9 EU Member States have fallen victims to a terrorist attack, meaning that 19 Member States have no recent history with terrorist attacks. Cross-border victim who come back to their country of origin often feel abandoned and face even more difficulties in accessing specialised psychological support and compensation schemes in the country of attack.

⁷⁶ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims' associations from France, Belgium and Spain.

2. Trafficking of human beings

When it comes to the compensation provided for victims of trafficking in human beings, most Member States rely on their general compensation schemes, which are described in other parts of this report⁷⁷. Various EU reports and the contributions from the EU civil society platform against trafficking in human beings for the survey launched by EU ATC for their contributions to the work of the Special Adviser⁷⁸ identify a number of challenges. Civil society contributions overall highlight that significant challenges exist with respect to access to compensation for victims of trafficking, with information on the implementation of national provisions in this sense being still limited, and procedures complex. Particularly victims of trafficking for sexual exploitation sometimes are not able to meet requirements for producing evidence of verifiable expenses or employment losses⁷⁹.

Civil society organisations highlight that the type of exploitation suffered by victim of trafficking can play an important part in the accessibility of compensation: victims trafficked for labour exploitation have additional avenues to claim compensation, including loss of earnings, whereas victims trafficked for sexual exploitation do not have verifiable expenses or employment losses and cannot avail in many cases to work related bodies. It is more difficult to prove and assess the psychological harm caused by sexual exploitation or trafficking for prostitution is more difficult to prove and assess than physical injuries. Trafficked victims for forced begging and for forced criminalities often are not recognised as victims when convicted for those minor offences.

EIGE's report on gender specific measures⁸⁰ notes that: women are often more vulnerable to fall victims of trafficking⁸¹.

Moreover, "When it comes to women victims of trafficking for sexual exploitation, in many cases they experience harms that are not material, in the sense that they are difficult to quantify — there is no tangible, objective measurement of harm. While this is the case for many violent crimes, the psychological damage for trafficking victims, in particular, is in many cases extensive and long-lasting."

Civil society organisations noted that victims of trafficking may encounter difficulties in receiving compensation in cases, where the crime itself doesn't take place in the Member States where the victim stays or where the victim left the territory of the Member State where the crime took place. Civil society organisations reported that in case it is not proven that the trafficking offence involved the use of direct violence against the victim; victims have difficulty to access compensation. Child victims of trafficking seem to have more difficulty to receive compensation.

⁷⁷ Commission, Transposition report (2016), COM(2016)722 final and also document 'Key concepts in a nutshell' at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/key_concepts_in_a_nutshell.pdf

⁷⁸ Extensive contributions were received from participants to the EU Civil Society Platform against THB, including 12 individual submissions from civil society organisation participant to the platform from 9 EU MS and 1 non-EU country and 3 joint submissions by either umbrella civil society organisations or platforms working against THB.

⁷⁹ Staff Working Document to second progress report of the European Commission (SWD(2018)473 final)

⁸⁰ <https://eige.europa.eu/rdc/eige-publications/gender-specific-measures-anti-trafficking-actions-report>

⁸¹ "women are in many countries disadvantaged when it comes to accessing education and employment opportunities. As a result, they are more likely to be preyed upon by traffickers, including those who use false promises of employment as a ruse. A background of socio-economic disadvantage makes it less likely that a victim who has recently escaped a trafficking situation will be able to support herself. A compensation payment can provide vital cushioning for a woman to enable her to support herself, prevent her falling back into exploitation as a result of economic duress, or otherwise." The same EIGE report highlights that the EU compensation provisions fail to specify the ambit of what types of harms could/should be covered by compensation. It is left to Member States whether, and to what extent, psychological harm is included.

Children's compensation should serve to find durable solutions for children and need to take into account in particular their lack of access to education, missed opportunities, loss of primary carers, emotional support⁸². Civil society organisations highlight that children may need also financial advice upon receiving the compensation.

There are difficulties to establish the amount of material and non-material damages⁸³ and the procedures may contribute to secondary victimization. Compensation amounts differ between EU countries and within the same country. Training of legal professionals in the criminal justice system dealing with compensation of THB victims is needed. Civil society organisations stress the lengthy compensation procedures. Additional conditions to free legal aid (such as financial test or requirement to stay or have a legal residence for over 90 days) make it even more difficult for victims of THB to receive compensation⁸⁴. If compensation is granted, it is often difficult to enforce the entitlement, because the perpetrators are not found or have moved their assets abroad or have declared themselves bankrupted. According to the civil society confiscation of criminal proceeds is rare as countries face significant challenges in identifying, tracing, seizing and confiscating proceeds of crimes. Civil society organisations note the pressing need for more pro-active investigations into traffickers and their assets, which can be a basis to compensate victims. Civil society organisations highlight that victims of cross border might encounter different obstacles when claiming compensation.

Since trafficked persons experience physical and psychological consequences of the exploitation and abuses, compensation helps redefining victims as 'subjects' of justice rather than 'objects'. Compensation can support victims to remedy the damage done, helps them towards their financial and economic autonomy and can reduce their vulnerability. Victims have mixed attitude towards compensation received from the traffickers, in some cases they see important to receive direct justice from the perpetrator in other cases they rather refuse the 'dirty money' from the crime.

3. Gender-based violence

According to the Istanbul Convention⁸⁵, gender-based violence includes acts causing "physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Domestic or intimate partner violence, sexual violence (including online), are all examples of the forms gender-based violence takes. The Istanbul Convention (which mirrors to a large extent the Victims' Rights Directive) sets out the following specific support needs of gender-based violence victims : information, general and specialist support services, shelters, telephone helplines, specific support for victims of sexual violence, protection and support for child witnesses.

⁸² The impact of online child sexual exploitation related to child trafficking, for example livestreaming is less researched and more is needed to training professionals in this regard. Repetitive-trauma of children needs to be avoided in the applicable procedures.

⁸³ Some civil society organizations referred to UNODC model law: http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

⁸⁴ Other obstacles enumerated by the civil society include: lack of awareness among professionals, lack of interpretations, lack of access to legal aid, postponement of trials and long duration of criminal and civil proceedings or the return of foreign victims to their country of origin

⁸⁵ The Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention"), the most comprehensive international legal instrument in this field, frames gender-based violence as a violation of human rights and a form of discrimination against women.

Article 30 specifies that the State Party should ensure that victims of violence against women and domestic violence have the right to claim compensation from perpetrators for any of the offences established in accordance with the Convention

Several key characteristics of gender-based violence result in particular hurdles/problems that are characteristic for victims of this type of crime. These problems – often structural and rooted into the European societies- have impact on access to compensation for victims of this type of crime

Gender-based violence is rooted in, and a manifestation of, structural gender inequality. The European Institute for Gender Equality explains that “gender-based violence may be normalised and reproduced due to structural inequalities, such as societal norms, attitudes and stereotypes around gender generally and violence against women specifically. Therefore it is important to acknowledge structural or institutional violence, which can be defined as the subordination of women in economic, social and political life, when attempting to explain the prevalence of violence against women within our societies⁸⁶.”

It is also important to note that rates of reporting gender-based violence to the police are very low. For instance, the European Fundamental Rights Agency 2014 survey on violence against women revealed that victims reported the most serious incident of partner violence to the police in just 14% of cases, and the most serious incident of non-partner violence in just 13% of cases. The reasons for not reporting are multiple, and include the trouble involved in reporting an incident and a sense that the police will not be able to do anything about the crime. For around one quarter of victims of sexual violence by a partner or non-partner, feeling ashamed or embarrassed about what happened was the reason for not reporting the most serious incident to the police or any other organisation.

Particularly in the case of domestic violence, the violence is usually perpetrated over a long period of time, and in the form of different, repeated, coercive and controlling acts. This is relevant both for the extent of the harm for the victim specifically, and also for members of the victim’s family, including any children, and community. In cases of femicide, children lose a parent. An additional challenge for victims of domestic violence is that in order to survive, victims tend to have to accept the attitudes of the offender. This creates a barrier for victims to recognise themselves as victims of crime.

Against this backdrop, civil society organisations reported that a crucial need of victims of gender-based violence is justice. It is important for victims to receive a clear message that what happened to them is not their fault (despite what the perpetrator, people in their social circle, or messages in the media, may have expressed), and is the sole responsibility of the perpetrator. Compensation can serve as a societal recognition that the violence was wrong and the victim should not be blamed.

Moreover, civil society organisations reflected that the level of compensation, beyond simply the availability of it, is important here. They explained that victims of gender-based violence may take the amount of compensation received as a reflection of how seriously the state/ society takes the harm they suffered, and the worth of their physical and psychological integrity.

In addition to adequately compensating harm and trauma experienced by victims as a result of gender-based violence, compensation should also serve as a form support for an independent life covering among other things therapy costs, loss of earnings and psychological damages.

⁸⁶ <https://eige.europa.eu/gender-based-violence/what-gender-based-violence/forms-gender-based-violence>

Furthermore, the amount of compensation attributed should take into consideration that in cases of domestic violence, the victim may have to leave their home town in order to be safe from the violence. This means the need for reintegration in a new environment including finding a new job, schools for children, and building up a new support network.

With regard to the delivery of compensation, it is important that there is a state advance of the compensation in cases where there is a delay in extracting the amount from the perpetrator, to ensure that any dependency or traumatic experience is not continued. The way the compensation is delivered should be sensitive to the specific needs of the individual victim.

Women victims of gender-based violence and their children often require special support and protection in legal proceedings because of the high risk of secondary and repeat victimisation, of intimidation and retaliation connected with such violence. Due to the prevalence of victim-blaming attitudes in society, including among professionals in the criminal justice system, and the normalization of gender-based violence⁸⁷, victims are vulnerable to re-victimisation during the criminal justice proceedings. Furthermore, retaliation or continuing violence by the perpetrator is a real risk.

Civil society organisations emphasised that practical support is also essential for victims of gender based violence and domestic violence. In the case of domestic violence, the decision to leave an abusive relationship is a complex one, fraught with insecurity and danger. Specialist support services play a crucial role in giving necessary practical support to survivors. Financial support is complementary to the practical support in order to empower the victims in particular in cases of economic abuse, where the victim becomes economically dependent on the perpetrator.

There are several specific barriers that prevent victims of gender-based violence from accessing fair compensation for the harms that they have suffered:

- Provision of the required documentation during the judicial proceedings (in cases of sexual violence, there are often no witnesses, and there may be no physical signs left by the time the victim has a medical examination).
- It is not clear who (police, support organisations, medical professionals, etc.) should be involved when it comes to providing basic information and support, including specifically on compensation.. For victims of gender-based violence, it is crucial that specialised support organisations are involved to offer advice. These services also have an important role in empowering victims, which enhances the capacity of victims to endure challenging and lengthy court processes.
- If the amount of compensation attributed in gender-based violence cases is often very low. This might in part be related to a lack of awareness and training of judges on the dynamics and traumatic consequences of this type of crime. The amount of compensation should reflect the wide-ranging and long-term harm of gender-based violence, going beyond potential medical and therapy costs, to also cover loss of earnings and broader psychological damages. Compensation should serve as a means for re-building an independent, violence-free life of dignity.

⁸⁷ Such attitudes are manifested in, for instance, false assumptions that women are likely to make up claims of violence

Finally, I would like to praise the Commissions' efforts for the EU joining the Istanbul Convention – which is crucial for strengthening the rights of victims of gender-based violence. First it is important that all Member States support the EU's accession and swift ratification. Once in place, the Member States and the Commission need to ensure that these rights are implemented and give real benefit to victims. Even the best rights are only as good as they are implemented and applied in practice.

III. European and national new strategy on victim's rights and compensation

A. Introduction: The need for a European strategy for victims of violent crimes

A lot has been achieved so far in the European Union in the area of victims' rights. In particular, the 2012 Victims' Rights Directive is an important achievement. It entered into application in November 2015 and brought a set of binding rights for all victims of all crimes and corresponding obligations on Member States. The EU has also adopted a series of specific rules that deal with victims of specific categories of crime. Within the major achievements, I would like to stress in particular the 2011 Anti-trafficking Directive that lays down specific rights for victims of trafficking in human beings and sets up the Office of the EU Anti-trafficking Coordinator. Another great achievement is the adoption of the 2017 Counter-terrorism Directive that dedicates entire chapter to specific rights of victims of terrorism, including a right to specialised support immediately after an attack and for as long as necessary. Finally, I would like to praise the Commissions' efforts for the EU joining the Istanbul Convention – which is crucial for strengthening the rights of victims of gender-based violence. Nonetheless, even the best rights are only as good as they are implemented and applied in practice. Now, it is up to the Member States- under the supervision of the Commission- to ensure correct trans- position and application of these rights.

However, victims' access to compensation (both offender and state compensation) is still very much left to the Member States' discretion. The problems presented in chapter III of this report demonstrate also that there are still lacunas in the EU legislation that hinder victims' access to compensation and expose them at high risks of secondary victimization.

We must also admit that the creation of the European Network on Victims' Rights is a first step towards improving coordination and cooperation at the EU level. The Network regroups national experts from Member States working in Ministries of Justice and provides for a platform for discussion, exchange of best practice and policy making for the national experts⁸⁸ Nonetheless, the extent and nature of problems presented in the first part of this report shows that the coordination and cooperation at both EU and national levels must be significantly strengthened in the future.

When it comes to victims of terrorism, in 2019 the Commission will set up the EU Centre of Expertise for victims of terrorism⁸⁹, which will provide the expertise and guidance for the Member States, the European Commissions, the European Network of Victims' Rights. It will be also a very important step before the setting up of a real coordination centre for victims' rights (including victims of terrorism), as proposed in this report.

⁸⁸ The Network is also working closely with victim support organisations, such as Victim Support Europe that are very active in advocating victims' rights at the EU level. When it comes to victims of trafficking in human beings, the Anti-trafficking Directive the position of the EU Anti-trafficking Coordinator that is effectively coordinating all issues related to anti-trafficking policy, including the victims' rights

⁸⁹ As a pilot project and in line with the request of the European Parliament to set up a coordination centre for victims of terrorism

1. Why do we need a EU victims' rights strategy for the next five years?

Today, the EU needs - more than ever - to continue developing and deepening its policy on victims' rights (including support and compensation). It requires an ambitious approach over the next five years. I therefore suggest launching a EU victims' rights strategy by the next Commission. Such next strategy is indispensable to solve recurring issues and to provide the Commission with the tools to improve the lives of thousands of EU citizens that were harmed by the crime and are now often forgotten by the state. In the following points, I explain why there is a need for such next strategy.

a) Compensation of victims of violent crimes is much more than a mere question of solidarity and empathy, it is a question of ensuring that victims' have effective access to their rights

Of course, we could easily explain the need for better reparation and compensation schemes in the EU to defend a **humanist and solidarity-based vision of society and politics**. According to such vision, we are under a moral duty to respond to the physical, economic and psychological difficulties of thousands of citizens affected in their flesh and souls after a violent act for which they are in no way responsible. However, improvement of the state and offender compensation schemes for victims goes beyond responding to victims' needs and showing our empathy. It is the states' duty to implement their rights. Compensation schemes for the victims are based on victims' rights and not only on victims' needs. Compensation of victims of violent acts belong to a system of human rights based on human dignity which entitles victims to be fairly compensated by their offender or, if not possible, by the State and to actively participate in a fair trial which aims at avoidance of impunity.

In my view and in light of the excellent analysis of the Fundamental Rights Agency⁹⁰ it is necessary to promote the move from a needs-based rhetoric to human rights language. As explained at the beginning of this report such swift *«changes profoundly the relationship between the victim and the State. The victim is no longer pleading for help on the basis of vulnerability, pressing needs and deservingness but demanding that the State takes seriously what it owes to the individuals living on its territory and their human rights. The State is no longer in the comfortable and patronizing position of a more or less generous Good Samaritan, but a duty-bearer indebted to the individuals living under its jurisdiction as rights-holders.*

⁹⁰ FRA (2019), "Justice for victims of violent crime. Part I: Victims' rights as standards of criminal justice" Luxembourg, Publication office of the European Union. (to be published)

b) Minimum rules on compensation for victims of violent crime is an issue of equal treatment of EU citizens and a requirement to build a more harmonious Europe

Lack of minimum standards on compensation and of cooperation within the EU is at the source of several major problems that victims face today when accessing compensation. A strong intervention of the EU and the Commission is needed to address the identified problems:

- Firstly, an increasing number of cross-border victims (involving both EU citizens and third country nationals) in the EU requires strengthening of cooperation among the relevant national authorities and calls for approximation of national compensation schemes.
- Secondly, all Member States provide some form of victim compensation. However, the levels of compensation and the efficiency of compensation mechanisms vary greatly from one Member State to another.
- Thirdly, the Member States have implemented their obligations under the 2004 Compensation Directive differently. The differences in the application of the rights to compensation of crime victims still persist. It results in inequalities in victims' access to compensation. In some instances, this has prevented Member States judicial authorities from cooperating with those Member States with deficiencies in their compensation arrangements. This has an adverse impact on the victims' rights to compensation and to effective access to justice.
- Finally, lack of certainty as to the level of protection (including access to justice and compensation) in another EU Member State may create obstacles to free movement of persons and of services (tourism). Some EU citizens may refrain from taking job opportunities, providing services or visiting another Member State if they feel that, they may become victims of a crime in another Member State and will not be properly protected. The wider impacts in terms of cost to society, citizen's trust in their Member States' justice system and judicial cooperation across Member States are potentially large

c) Political parallelism with the increased focus on the fight against violence and terrorism in EU

Under the pressure of the barbaric and deadly terrorist attacks experienced during the last legislature, the European Union decided to take giant steps forward in strengthening coordination and harmonisation in the fight against terrorism. The significant increase of terrorist acts over the past five years has demonstrated that the situation of victims of terrorism and more generally victims of violent acts deserve to be improved and that the European Union needs to take further steps to better implement their rights. Some important initiatives were already taken. The EU counter terrorism policy includes for the first time victims of terrorism. In particular, the adoption of specific rights for victims of terrorism in 2017 and setting up of the EU Centre of Expertise for Victims of Terrorism planned for 2019 are great examples of such victims' – oriented EU policy.

This approach should be now spread to victims of all crimes. For the next five years, strengthening victims' rights should become a political priority, as strong as priorities concerning counter-terrorism or security policies.

d) Risks of an increase in numbers of cross-border victims in a borderless European Union

As explained in the introduction of this report, the EU should prepare itself to fight with new forms of crime and to take care of an increasing number of a cross-border victimisation.

It is related to the fact that more people travel or move to another EU country. The number of cross-border victims in the EU may also increase due to new risks related to terrorist attacks and new forms of violence such as violent forms of cybercrime. Moreover, even if it is not the scope of this report, we must acknowledge that climate change and the recent deadly natural disasters will not stop and will lead to a significant increase in the number of victims of natural disasters in Europe. It will also be up to the next EU Commission to address the situation of victims of natural disasters, which can be the subject of a second possible report requested by the next Commission. The number of the reported crime may also increase: One woman in three has been a victim of violence and we know that gender-based violence is typically unreported. By improving support and protection services and the level of compensation within a strategic framework, we will enable these women's plight to empower more women to come forward and report the crime and make offenders accountable for their acts.

e) Need for the EU to renew its commitment to victims' rights

In-depth analysis of the problems in accessing compensation shows their cross-cutting nature and involvement of different actors at the EU and national levels. Any policy strengthening and harmonising victims' right to compensation should include imposition of minimum standards and a deeper cooperation among all actors involved. A coordinated and holistic approach is necessary to ensure that victims have effective access to their rights. At the same time, no major new action on compensation matters has been taken since 2004.

In the Commission's impact assessment on the Victims' Rights Directive, the Commission committed to acting with respect to compensation matters in the coming years. A similar commitment was made in the Budapest Resolution of the Council in 2011⁹¹. Whilst the Commission clearly remains committed to progress in this field, the complexity of the issues combined with many important priorities in the victims' field has made such progress difficult. A strategy could permit the Commission to clarify the priorities in the field and facilitate for Member States to foresee future obligation.

⁹¹ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings - 2011/C 187/01 (see, in particular, Measure D in the Annex)
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2011.187.01.0001.01.ENG

2. Which Objectives for a European strategy for victims of intentional violent crimes?

The title of this report is “Strengthening victims’ rights: from compensation to reparation”.

It already indicates the main objective of the strategy and recommendations which I propose in this report: an evolution or a “paradigm shift” from an approach based on victim’s needs for limited financial support to a more ambitious and fairer approach based on victim’s rights to reparation for the harm suffered .

The recommendations propose in fact 4 key “paradigm shifts” in the EU victims’ compensation approach:

- A shift from the concept of “victims needs to state compensation to a concept of victims’ rights to state reparation.
 - A shift from the concept of “victims needs to victims’ rights means that currently under the EU law, victims of violent acts have a mere right to access national schemes of compensation, which results in their need for compensation not being fully met. This right should be strengthened. EU law should provide for a right to be fully compensated by the offender or, if not possible, by the state.
 - A Shift “from compensation to reparation” implies an evolution from a mere financial assistance ‘compensation” to the concept of “reparation” covering the compensation for the personal physical, psychological and financial harm suffered (and not via lump sums) but also elements of recognition, reparation (as much as possible) rehabilitation and building resilience
- A Shift from the priority of the offender compensates first to the priority of state compensates first - by adopting the principle of the states’ upfront payment where the state compensates victims first and later recaptures it from the offender. It means that compensation has first to be granted by the state and not any more, as in a majority of member cases, after the judicial decision concerning the offender.
- Shift from the principle of compensation by the member state where the violent act occurs to the possibility for victims to choose compensation from the Member State of their residence. In this case the Member State of residence would be able to recuperate the compensation from the Member State of crime.
- Shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards

a) A shift from the concept of “victims needs to state compensation” to “victims’ rights to state reparation”

From needs to rights

As explained more in detail in the part on "Human-rights based concept of victimization" , the shift from a needs based approach to a rights based approach means that victims of crimes have a right to justice and that the State, via criminal justice has an obligation to redress – to ‘right’ – the wrong done to victims. When the offender is fully or partly insolvent or unidentified or dead, the victim’s right to be fully compensated by the offender is not respected. In this case, it has to be the duty of the State to compensate instead of the offender and to implement the violated victim’s right. This approach is in line with the Council of Europe Convention on Compensation, which states in Article 1.2 that “Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished”.

Therefore, the second shift closely linked to the first one requires that the right of a victim of a violent act is to be compensated for the different damages suffered which should be defined in the same way independently of whether the victim is compensated by the State or by the offender. The objectives of compensation should be the same in the case of compensation from the perpetrator on the basis of its own civil responsibility and also in cases where the State compensation replaces or advances the compensation of the perpetrator owed to the victim.

From compensation to reparation

For state compensation, the 2004 Compensation Directive requires Member States to ensure that victims have access to “fair and appropriate compensation”. In several Member States, this concept is implemented by the grant of a lump sum which is unrelated to the damages suffered.

The “compensation schemes” should shift to a “reparation scheme”. It means that the “fair and appropriate compensation” defined in the directive cannot be implemented by granting lump sums on the basis of a mere financial support which is unrelated to the personal damages suffered. This principle of “full reparation” is the logical consequence of the rights-based approach presented above. The “reparation scheme” has a dual meaning, different from the compensation schemes as implemented by the majority of the EU Member States.

- First “reparation scheme” includes the coverage of the different personal damages and harm done to the victims by a violent act (physical, professional, psychological). It requires analysis and expertise of the different damages, the short and long term personal assessment of the victims situation in order to try to fully repair what happened and to place the victim to the closest position possible of his/her previous life. Provision to the victim of a full reparation is not only about compensating for the unjust harm suffered; it is also a mechanism of giving the victims the opportunities to return to the circumstances that are the closest possible closest to that of the victim before the crime.

- Secondly, the term “compensation” refers only to the purely financial and pecuniary aspect of the response given to a victim of a violent crime. It is a fundamental element to enable the victim to cover his economic and material damages (loss of salary, travel or funeral costs, adaptation of the house, family assistance, financial compensation for physical and psychological damage, etc.). But it is clear, that financial compensation is insufficient to meet the personal needs of victims who require more personalised ways to be compensated not only in money but also and above all “in kind”, via services (health care but also human assistance, psychological, administrative and practical support, post trauma resilience and a referral person). When recovering from a violent crime the assistance of others, including psychological, practical and administrative assistance is essential. It is the first kind of reparation that the State has to offer alongside financial compensation. The concept of reparation implies therefore a State duty to subsidize or directly offer, as part of the compensation, in addition multidisciplinary free victims support services (health, psychological, practical, legal, family, rehabilitation) in the short and long term. According to the principle of full reparation, the State compensation should also aim for the development of each victim’s personal resilience despite the trauma and damages suffered.

That is why the proposed strategy also addresses aspects related to victim support services.

b) A shift from the priority of the offender compensates first to the priority of the state compensates first - via states’ upfront payment where the state compensates victims first and later recaptures it from the offender

The principle according to which the duty to compensate victims lays in the first place with the offender is not questioned here. Wronged victims will always expect that their legal community will not allow the crime to pass with impunity and the offender should be sued both for the crime perpetrated and for victims’ compensation. However, as specified in this report offenders’ compensation is extremely difficult for victims to obtain.

It is costly and time consuming and often provides only symbolic compensation. It is also difficult to execute the adjudicated compensation from the offender. Majority of EU Member States requires that victim first searches offender compensation before claiming state compensation. A reversal of this logic is needed. The duty of the State to respect victims’ rights to be compensated should be to provide victims with upfront payment and to recapture it later from the offender. The state advances the payment to the victims and is immediately subrogated in the victims’ rights to return to the offender to obtain all or part of the due compensation. With this logic, victims benefit from dealing with one single interlocutor and avoid the risks of secondary victimisation related to often prolonged contacts with their offender.

The upfront payment by the state should be a victims’ choice. Victims should be always able to claim compensation from the offender (in criminal or civil proceeding) if they wish so. This system is far fairer towards victims and can be organised in each Member States without any deep legislative changes concerning the judicial proceedings that vary a lot between Member States.

c) Shift to the possibility for victims to choose compensation from the Member State of their residence instead of a Member State where the crime took place.

According to Article 2 of the 2004 Compensation Directive, the Member State where the intentional violent act occurs has to compensate the victims according its national compensation scheme. The Same principle is incorporated in the Council of Europe Convention on Compensation. The differences in legislation and compensation arrangements in Member States make it difficult for the victims in Member States in which they do not reside to submit compensation claims. The lack of uniformity of compensation practices and procedures, governance requirements and arrangements at national level and national legal framework make it difficult for respective national authorities (i.e. deciding and assisting authorities) to navigate compensation arrangements other than their own. In the light of all these problems, seeking compensation from the offender in cross border situations may prove impractical if not impossible. There may be merit in requiring national compensation scheme to allow cross border victims to access state compensation in their country of self-recording to their national compensation scheme, and not where the crime took place. Victims would however, retain the option of claiming compensation in the country where the crime took place.

This recommendation would enhance the crime victims' access to financial compensation. The likelihood of receiving compensation and support provided to crime victims would also increase. It would render the cross border compensation simpler, less burdensome to the victim and more certain of leading to a satisfactory outcome. EU citizens would become aware of differences in victim's compensation regimes between Member States and it is likely that there would be peer pressure amongst Member States to 'reciprocate' in the sense of adopting similar approaches to victims compensation so that EU citizens would increasingly look to the country in which the crime took place to provide access to compensation. In this way it is likely that in due course the proposal would reinforce the tendency for differences in victims' compensation regimes to reduce between EU countries.

d) Shift from disparities and lack of cooperation to stronger cooperation, coordination and harmonised minimum standards

One of the most important sources of problems is also the large discrepancies between Member States compensation schemes and practices preventing EU citizens from obtaining equal and fair treatment. There is therefore a need for a much more harmonised legal framework within the EU.

The other problem is due to the lack of cooperation on a national level between stakeholders, national authorities, public services and victims support associations services but also on a EU level: Actions should be taken on both a EU and National level:

- At a national level, the care of victims requires close collaboration between public authorities, support services and between authorities and support services (health, justice, police, psychological assistance and support services, insurance, etc.).
- Also at the EU level there are many actors that deal with victims' rights policy (FRA, EUROJUST, DG Just, DG Home, EU Anti-Trafficking Coordinator, ENVR,) and NGO'S (victims' associations and victims support organisations such as Victim Support Europe) that require a more coordinated and integrated approach.
- Coordination and cooperation should also be strengthened among the EU Member States as the increase of cross-border cases requires better coordination between National authorities and their respective coordination centres, but also greater harmonisation of legal provisions for victims.

3. Which Methodology for a EU victims' rights strategy?

- The Commission could first set up a European experts committee on victims of violent crimes, including experts from Member States, different stakeholders (relevant services from the European Commission (DG HOME and DG Justice) Eurojust, the ENVR, the EU Counter-Terrorism Coordinator, Victim Support Europe, EU Anti-Trafficking Coordinator and NGO's. The high-level members of the informal Steering Committee that kindly advised me in drafting this report can provide a basis to such formation. In line with the objectives to be decided by the next Commission, such Experts' committee could advise the Commission on how to improve victims' access to compensation in the European Union on the basis of the findings of this report and other reports from different stakeholders. The Expert's Committee could also act as an embryo of the hub of expertise to be integrated into the future European Coordination Centre for Victim's Rights (see below)⁹²
- The first important step for the next EU policy should be to publish a White Paper for victims' rights. The White Paper should present the strategy that would be based on the results of several reports including this one, research, expertise, and consultation and should include specific actions and guidelines to the Member States. The strategy should also include on my point of view – if in line with the objectives of the next Commission – a draft legislative proposal on victims' compensation – including adaptations to the 2004 Compensation Directive and to the 2012 Victims' Rights Directive.

⁹² If still necessary a large inquiry on the state of play of the Member States implementation of EU rules, a large consultation (including digital platforms) concerning problems and expectations from the EU victims and organisations to have the largest participation process could be organised but the problems faced are already well known and it is argued to be more appropriate for actions and decisions than long surveys

B. Recommendations for a EU victims' rights strategy

I present my recommendations on the basis of the analysis of problems and suggestions that I have gathered during the one-year work on this report. My research includes in particular several reports in the area of victims' rights, numerous meetings with various stakeholders including victim support services, testimonies and studies presented by victims Support Europe, the data gathered by the ENVR and different contributions of the members of the informal Steering Committee. The recommendations are also based on the best practices of different Member States which are summarised in Annex IV. My recommendations are constructed around 6 blocks: Better cooperation/ Better training/ Better information/ Better state compensation/ Better offender compensation/ Better support services.

Recommendation 1: A EU victims' rights strategy for the next five years divided in two-steps: the first step with immediate practical initiatives to be taken by the EU without any changes to EU legislation and the second step with recommendations requiring EU legislative changes

I propose a progressive but also proactive strategy, divided in two steps- depending on the choice of the next Commission:

First step: Immediate practical initiatives to be taken by the EU without any changes to the EU legislation

I have identified a number of actions that can improve victims' access to compensation in the short term. They can be carried out without having to adapt the existing legal framework and existing policy mechanisms. The European Commission can play a leading role in taking new concrete initiatives concerning information, training and cooperation between the Members States. These can be done by supporting collaboration in cross borders cases, providing guidelines and expertise, facilitating actions to be implemented by Member States, agencies, and victim support organisations. It can also guide Member States to improve their national systems on a voluntary basis. Such non-legislative recommendations should be supported by peer learning activities, benchmarking, systematic reporting and other tools aimed at improving cooperation between Member States. Some actions however should be decided rapidly and may require quick changes (such as the designation a EU Victims' Rights coordinator or the setting up of an EU Coordination centre for victim's rights).

Second step: recommendations requiring EU legislative changes

These actions should be preceded by the first step actions which are necessary to efficiently improve victims' compensation, but may not suffice to complete all objectives. Given the often-poor performance of the national compensation schemes, it is likely that the adoption of recommendations without legal backing would have a lower impact on the ability of victims to access compensation arrangements. In particular, when it comes to the likelihood of obtaining compensation decisions and the enforcement of the compensation awards from the offender.

That is why I have also included in the recommendations (as a second step) long-term recommendations for the Commission to set up a package of mutually reinforcing legislative proposals. These recommendations will make a stronger contribution to the policy objectives. The proposed changes

would enable Member States to move towards more common standards and legally binding enforcement mechanisms on an EU level.

Such a new legislation would respond to the problems such as the lack of fair and timely offender's compensation and diversity of national compensation schemes that persist, despite the existing EU rules in the area. The central argument for these additional recommendations is that the current legislative framework needs adaptation in order to give an adequate response to the problems faced by victims and effectively implement their rights to compensations. It will be up to the next Commission to consider the entire recommendations or choose the most relevant. If there is a solid will for legislative changes, I would recommend to merge directives 2012 and 2004 to indicate that victims' reparation or compensation need a holistic approach and falls on one hand under victims' rights States' duty, State compensation and on the other hand under judicial proceedings and support services. Of course, mere adaptations can also be integrated in the 2 existing directives. In the event that unfortunately, the commission does not choose this option, the proposals of EU legislative changes presented in this report should be then presented as recommendations to the member to implement themselves national's legislative changes. Both options are mentioned in the presentation of the Report

My suggestion for the next Commission is to make an overall plan with a step-by-step programme. Not all things can be done at the same time. Better implementation of the existing EU-rules, new immediate EU actions concerning cooperation, information and training and therefore the designation an EU Victims' Rights coordinator or the setting up of an EU coordination centre for victim's rights. It is the same for funding of EU actions and guidelines. Meanwhile, the second step concerning the preparation of the next rules can be launched with the participation of various working groups involving the different stakeholders.

The point of departure of Member States is very different. Some have lots of facilities for compensation, others do not. This situation should be taken into account. If a Member State has not implemented the present rules, how can we expect it to be ready to implement higher standards on the basis of new EU-rules?

1. Better cooperation at national and EU level

To achieve better, fairer and quicker reparation, including compensation and support for victims that would be non-discriminatory and would include immediate and long term support, we have to ensure better coordination among all actors involved. That would include exchange of best practices and mutual training.

a) Better cooperation at national level

Recommendation 2: Guidelines or legislative provision to make the Member States adopt a "national victim's rights strategy" (legislative change or recommendations)

We have noticed that many Member States have not elaborated available strategy on the objective of state compensation. Indeed, some compensation authorities interviewed in the framework of this report admitted their lack of strategy.

Others have developed their objectives for compensation but don't seek to share these with victims, sometimes by creating a difference in expectations and disillusioning the victim.

Recommendation:

- 1° to recall⁹³ EU guidelines for the Member States to develop a more integrated and holistic approach concerning victims' rights and adopt a national victims' right strategy including all relevant actors to improve the support and compensation of victims of violence acts. This strategy should fulfil some EU requirements based among others on the present report.
- 2° or to be more efficient in drafting a new provision in the 2012 Directive or in an new global directive on victims' compensation to impose on the MS to adopt a national victims' right strategy and, on this basis, to send to the Commission every 2 years a national report on the state of play of the implementation of the strategy guidelines.
- 3° EU could propose "flying squads" of specialists in order to assist Member States to improve present systems (incl. implementation of existing EU rules on compensation) and to assist in implementing new rules.

Recommendation 3: setting up of national victim's rights coordinator, national victim's rights coordination body, national single point for victim's compensation and national crisis response networks (legislative or non-legislative changes)

The strategy should include the setting up of national victims' rights coordination body. A holistic strategy for victims involving all actors that come into contact with victims is absolutely necessary in order to ensure that victims' have effective access to justice and to compensation. Such a holistic approach cannot be achieved if all actors coming into contact with victims don't work closely together; Such structure already exist in some Member States, for instance in France. At this point I would like to stress that I have been very much inspired by the efficiency and great work of the current French inter-ministerial delegate on victims' rights.

- 1° The Commission could oblige or recommend⁹⁴ to the Member States to designate a national victims' rights coordinator in charge with the national coordination between the different authorities and between the public authorities and the victims' support service. This proposal would go with the setting up of a permanent national coordinating structure under the supervision of the national victims' rights coordinator, providing for internal different platforms of department to offer common services and exchanges of information between the different national stakeholders (compensation bodies, victim support organizations, prosecutors, police, health care, emergency services, foreign affairs). This structure could be decentralized and become a single contact point where the victims can find the different information's and connections with the personal supports needed and the direct contacts with the state compensation authorities.
- 2° the Commission could – in addition to the current recommending- to adapt the 2004 Compensation directive so that the national contact point designated according to this directive are responsible for the state compensation national structure. Without any specific request, the contacts points are often not directly linked with the daily exercise of the state compensation

⁹³ Such guidelines already exists see https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en

⁹⁴ in integrating a provisions in the directives

competences and can also differ from one meeting to another creating non efficient and unstable cooperation.

- 3° Another important recommendation expected by numerous victims and organizations supporting victims of terrorism should be to set up , within this coordination structure, a national crisis response department of network, closely coordinated with police, prosecutors, emergency services, rescuers, health services and of course victims' support service . It should be sort of single contact point, or 'one-stop-shop', for victims of terrorism or terror attacks with several casualties especially in the immediate aftermath of a terrorist attack⁹⁵. For example, the Dutch government has also established an online one-stop-shop after the MH17 attack. The online platform offered victims information from different authorities, support organisations and experts and facilitated contact with the different actors.

The national crisis centre could include the following services:

- To provide for an official and reliable source of information to victims and their families and to set up, a free 24-hour call line offering advice and guidance to callers.
 - To coordinate governmental/public authorities and NGOs reacting to the event.
 - To established near the site of the crisis an immediate reception of all victims who are not in need of urgent medical care with, psycho-medical first aid.
 - To train the professional supporting victims, offering a multidisciplinary team to meet the immediate needs of traumatised victims and their families
 - To inform victims face to face on their rights and offer practical guidance on how to proceed through the system. Providing information on compensation face-to-face is argued to be more effective for those experiencing trauma, and information is more likely to be perceived as being provided respectfully when done so in person.
 - Provided for documents about compensation information, including documents necessary to make a cross-border application for compensation
 - To refer victims to external referral points depending on their needs; medical service, police station, victim support organisation, embassy, national compensation authority, etc.
 - To provide assistance on translation to cross-border victims.
 - To establish full mapping of all services that react after an attack and in the long term, determination of what activities each service is responsible for and collaboration and preparation before anything happens
- 4° A qualitative and comprehensive registration of victims is crucial for quality support and follow up of victims. Member States have to take measures to share information among services and institutions whilst respecting privacy. Developing a list of registered victims is a precursor for wide-scale targeted information provision, access to justice and tailored services which have to be directly offered to the victims and not requested by them. A proactive follow-up is needed to reach the victims without having to wait for a special request to be allowed to accompany them; It should be done in accordance with the EU rules on personal data protection and data sharing.

⁹⁵ (in the framework of the above mentioned permanent national coordination structure or closely linked to it) taking inspiration from the French model ' (CIAV) and the 'Centre de Crise et de Soutien' (CDCS).

Recommendation 4: New rules to coordinate between sector insurance and state compensation authorities or governments (recommendations)

When an insurance system exists for terrorism or violent act, there is a need for the Member States to put legally in place mechanisms on coordination of public/private actions. In particular, to make private actors accountable, while ensuring public financial participation in the event of excessive losses and to define more precisely their duties toward the victims and to oblige them to grant emergency and upfront payments, to simplify the procedure and decide on a common system of expertise and evidentiary requirements.

b) Better coordination at EU level

In-depth analysis of the problems in accessing compensation shows how victims' rights and victims' compensation relate to cross-cutting issues and involve different subjects and actors at the EU and national levels. Any policy improving the situation of victims' rights or victims' compensation must go through a reinforced cooperation between EU actors and much closer EU policy coordination. There is also an important need to improve, under the active supervision of EU, the coordination between the Member States and national authorities to deal effectively with the cross-borders cases.

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Recommendation 5: designation of a EU Victims' Rights coordinator (internal decision of the Commission or legislative change)

I recommend the designation of a EU Victims' Rights Coordinator responsible for improving, on behalf of the commission, coordination and coherence within EU, coordination of the work of the experts and for developing existing and new EU policies to address victims' rights issues, as does the EU Anti-trafficking Coordinator also for anti-trafficking issues.

The EU Victim's Rights Coordinator could be responsible for improving coordination and cooperation among and between EU institutions, EU agencies, between Member States, between on the one hand EU and the other hand national authorities and victim support services. The Victims' Rights Coordinator should also be responsible for developing new actions. He/she should have the same statute as the EU Anti-trafficking Coordinator who has been perfectly ensuring a coordinated approach on all issues related to trafficking of human beings in relation to other relevant EU policies and with relevant EU and national actors. To avoid duplication, EU Victims' Right Coordinator competences should not enter into the scope of the EU Anti-trafficking Coordinator's actions.

The following mission of the EU Victims' Rights Coordinator:

- In close connection with the ENVR ,ensuring the coordination of the actions and collaboration with external stakeholders (such as the European Network on Victims' Rights, FRA, EURO- JUST, DG Just, DG Home, EU Anti-Trafficking Coordinator, EU counter-terrorism Coordinator, the Judicial Training Network) and NGO'S (victims' associations and victims support organisations such as Victim Support Europe);
- Proposing guidelines and action plans on victims' compensation and victims' rights, helping to prepare and implement the next EU strategy on victims' rights;
- Monitoring the implementation of the Victims' Rights Directive, 2004 compensation directive, 2017 Counter terrorism directive;
- Increasing awareness raising and acting as a victims' rights advocate in EU (organise and promote awareness raising campaigns, promote the EU approach to victims' rights in contacts with third countries)
- Ensuring appropriate mainstreaming of victims' rights policy into all other victims' related policies (gender-based violence, counter-terrorism and security, inclusive society, insurance);
- Initiating the coordination between the national authorities
- Ensuring the supervision of the Centre of Expertise for Victims of Terrorism and if decided the victims 'rights coordination centre (see below)

If the option of creating an EU coordination centre for victims' rights is chosen, the coordinator should ensure the supervision or direction of the centre and, in this case, the above-mentioned missions should be implemented through the coordination centre. If the option of creating an EU coordination centre for victims' rights is not chosen, the coordinator should run a specific task force in charge with the same missions and gather different stakeholders in a participative plat- form dealing with victim's rights and compensation. If the option of designating a coordinator is not chosen, these functions should be endorsed by a special task force within DG Justice to guide and facilitate actions, implementation and cooperation.

Recommendations 6: Setting up of an EU multidisciplinary coordination Centre for Victims' Rights under the supervision of a EU Victims' Rights Coordinator (legislative change)

In addition to the designation of an EU Coordinator for victim's rights, I also recommend to set up a multidisciplinary EU Coordination Centre for Victims' Right within the Commission. Given the complexity of victimisation and the challenges, there is a need for expertise to support the European Commission in different fields. Such a Coordination Centre should work under the coordination of the EU Victims' Rights Coordinator and could be managed with different departments dedicated to specific missions, with a support of a multidisciplinary board regrouping the major relevant stakeholders in the area of victims' rights. It should not deal with the present and legal mission and action of EU ATC but will closely collaborate with her.

The role of the Centre should be to:

- Gather the expertise about victims' rights and compensation in a specific department that would provide expertise, training, exchange of good practices, guidelines to EU institutions, Member States authorities and victims support services. It could integrate a EU resilience and post trauma platform or choose to closely collaborate with the future resilience I centre to be set up in France
- Assist the EU coordinator in ensuring coordination of the actions on victims' rights within the Commission and externally with the different stakeholders such as the European Network on Victims' Rights, FRA, EUROJUST, DG Just, DG Home, EU Anti-Trafficking Coordinator, the Judicial Training Network) and NGO'S (victims' associations and victims support organisations such as Victim Support Europe)
- Ensure appropriate main-streaming of victims' rights policy into the others EU victims' related policies and contribute to the development of existing or new Union policies and strategies to improve victims' rights and compensation
- Increase awareness raising and assist the EU Coordinator in its role of a victims' rights advocate (organising and promoting awareness raising campaigns, information tools, the promoting the EU approach to victims' rights in contacts with third countries); set up of a single EU on-line platform and website (see below) in all EU languages on concrete information's concerning the rights of and support to victims including victims of terrorism with a link to the points of contact in each Member state including a help line setting
- Ensure implementation of the relevant EU rules by providing guidelines and constructive dialogues with Member States and other actors or taking adequate actions in case of infringement of the legal EU obligations
- Within a special department dedicated to victims of terrorism or multi casualties violent act, as proposed by the European Parliament, provide for timely and adequate crisis support in cases of mass attacks in one or several Member States
- Within a special department dedicated to cross-border cases, provide for concrete coordination between Member States and practical support if needed concerning complex cross border cases⁹⁶. Whilst opportunities for coordination with consular services lie primarily in Member States, also the centre could facilitate structural coordination through increased collaboration with EEAS, embassies and consulates.

The activities of the Centre should be supported by the ENVR. The modalities of close cooperation between both structures should be established at the later stage. The EU Centre of Expertise for Victims of Terrorism that will be set up in 2019 should be integrated into the future European Coordination Centre for Victim's Rights, as an expertise department. It should develop and keep updated a pool of experts to assist Member States in different domains including psychologists, lawyers, victim support organisations and first respondents.

⁹⁶ The coordination of cross-border compensation across EU Member States requires a coordination role embedded in the responsibilities of EU. If the option of a EU victims' rights coordinator is not chosen neither the setting up of a coordination centre, DG Justice can guide and facilitate the functioning of national compensation authorities to support resolution of concrete issues, mediate, find solutions. Ensuring the network of national compensation authorities functions sustainably and effectively necessitates such a position

The platform should in particular develop a specific pool gathering psycho-trauma experts specifically trained to deal with posttraumatic syndrome characteristic to victims of terrorism, ready to be deployed, immediately after a terrorist attack to the Member State concerned.

The platform would gather experts, research, knowledge and skills from European Union and around the world. The centre will develop awareness raising and develop guidelines and training programmes for the Member State.

c) EU actions to improve collaboration between different national authorities and with stakeholders

Recommendations 7: A common concrete action plan to deeply and concretely strengthen the cooperation in cross border cases concerning relevant and compensation state authorities (no legislative change)

DG Justice and ENVR, on the basis of the results of technical working groups with the contact points, the national compensation and other relevant authorities should set up in short terms a common concrete action plan under the impulse of the Commission to deeply and concretely strengthen the cooperation in cross border cases . This action plan should:

- Recommend concrete actions and proposals of agreements or protocols to be adopted between the relevant authorities
- Solve different problems concerning the implementation of the compensation directive, the hurdles in compensation procedures, and the exchanges of information duties.
- Propose concrete cooperation and common decisions concerning common forms, evidentiary requirements, expertise, translation duties, collaboration between involved support services
- Decide on a type of common national and bilateral actions process in the aftermath of a terror attack between relevant national authorities, contact points and embassies of the deciding or assisting Member States
- Clearly state the respective duties of the assisting and of the deciding Member states towards each other. Currently, some Member States have stepped away from using the provisions in the Compensation Directive as they feel assisting victims in claiming compensation abroad is more harmful than positive for the victim's well-being. Some other Member States don't even receive any information on the grant or compensation amount to a victim by a Member State. There are no specific procedures to avoid payment duplication;
- Ensure among others that the network of national compensation authorities functions sustainably according to a new clear process mutually decided, that the contacts points designated according the 2004 Directive are the adequate responsible for compensation and participate on regular basis in meetings. Stronger networks of cross-border collaboration authorities should also be embedded in stronger coordination with other European institutions, the ENVR, agencies and non-state actors such as Victim Support Europe.
- Organise regular meetings of national contact points. It has to be organised officially on regular and professional basis. All national contact points interviewed strongly applaud promotion of these new meetings that could take place under the impulse of the commission.

The benefits of regular meetings are to bring national authorities together to discuss European policy and legislation on cross-border compensation. They also promote building of relationships between National Compensation Authorities that facilitates further collaboration.

They offer a forum to ask questions bilaterally on procedures to claim for compensation and specific cases; share good practices on cross-border compensation procedures, information provision and collaborations; organise mutual trainings between national compensation bodies and victim support organizations to improve handling of compensation claims and minimize the risk of secondary victimization.

Next to collaborations as an EU-wide network, compensation authorities strongly value and appreciate good bilateral contacts and information sharing as a foundation for collaboration on cross-border compensation. Bilateral or trilateral visits can promote collaboration between countries who share many cases. It would facilitate and could even decrease costs of collaboration. Promotion for action plan national and for as strong networks requires specific initiatives and funding from the commission. In previous years fewer initiatives or funding for facilitating meeting of compensation points has dwindled. To reinforce the network appropriate investment is needed.

Recommendation n°8: New provisions to integrate in the 2004 Compensation Directive concrete duties of collaboration imposed on the different relevant national authorities (legislative changes)

To be more efficient, Articles 3 and 5 of the Compensation Directive should be adapted to provide for more precisions regarding the concrete duties of national authorities in cross border case (binding mechanisms of collaboration, exchange of information, victims' assistance and information, see others examples above.

Recommendation n°9: Better harmonisation of the EU insurance sector and cooperation with the compensation authority

The Commission should launch a call of procurement to study how to improve harmonization between the EU insurance sectors and national laws concerning the coverage of terrorism or violent crime, the need for a private/ public model, the ways to simplify the procedure (expertise's etc.), to be more victims' friendly, to collaborate with the national compensation funds or with public authorities.

Recommendations n°10: A common concrete action plan to deeply and concretely strengthen the cooperation in cross border cases concerning relevant and compensation state authorities (non legislative change)

The commission should ask EUROPOL, EUROJUST and FRA to work together to draft a report on how to improve the cooperation and exchange of information between the judicial authorities (police, prosecutors and judges) concerning victims of violent crime or terrorism in cross border cases.

d) EU initiatives to set up the EU Solidarity Fund for victims of terrorism

We suggest the creation of an EU Solidarity Fund for victims of terrorism.

Recommendations n°11: the creation of an EU solidarity fund for victims of terrorism

We suggest the creation of an EU Solidarity Fund for victims of terrorism that would support national actions for victims of terrorism. Such fund should/could be extended to other victims of mass casualties. To cover the additional costs of terrorist (or other criminal acts) of an exceptional dimension and exceeding a certain national budgetary level. The fund can be established as a self-standing instrument on a basis of new EU legislation or by extending the scope of the EU Solidarity Fund covering natural disasters.

2. Better and more accurate information on victim's rights and state or offender compensation

a. Short term actions and Recommendations to sufficiently and accurately inform the victims on a simple way about their rights and compensation schemes

First of all, in order to be as efficient as possible and to better support victims, the EU should conduct studies to measure how victims perceive the information they receive. On this basis, EU (through the victims' rights coordinator and the EU victims' rights coordination centre or the DJ Justice) should take important measures to strengthen information on victim's rights⁹⁷:

Recommendation n°12: Better, accurate and victims' friendly information (non legislative changes)

EU should take the following measures:

1° To fund initiatives for the development of awareness raising campaigns in the Member States through media advertising on television, radio, advertisements on billboards, transportation hubs, tourist maps, airline, medical services, Facebook, social media etc...

2° To take support initiatives for awareness raising campaign about the obligation to provide information by authorities who come into first contact with victims must including information concerning local victim support organisations and other available support services.

3° To ensure uniformity with regard to information provided to victims, recommendations should ask the Member States to provide a single official website containing accurate information on their national compensation schemes. This information should be revised and updated annually. This will avoid incoherent and inaccurate information being provided. EU should promote setting up of e-inter-active

⁹⁷ A good example of EU wide awareness raising campaigns is the information provision on EU rights for travelers that is spread in airports, travel hotspots, websites

and user- friendly informative national websites, hotline telephone lines, personal contact with victims via victim support organisations and compensation bodies.

4° To set up EU multi-languages and victims' friendly website on legislation, national compensation schemes, forms, contacts, expertise and news in case of emergency with updated information. The e-Justice Portal is the primary tool for compensation authorities to find information on compensation schemes in other Member States. Currently, the online portal E-Justice cannot be seen as a fully reliable source, as information can be contradictory to other national sources.

- The e-Justice Portal needs to be more widely advertised, for example in national websites on compensation schemes. This EU website should include direct links to national official websites. The Commission should establish a common glossary of terms related to compensation to avoid confusion for victims and national authorities;
- There is a need for a strong system that ensures a continuous and multi-languages update of information through good communication and coordination with Member States. Public contact details for claiming compensation) has to be regularly updated on the e-Justice Portal;
- To increase the trust and usefulness of the e-Justice Portal (to be encoded directly by the national e-Justice content managers). Contact details of individual experts who act as Central contact points are communicated to the Commission (for further distribution among the network) and have to be available for requests from other Member States through the website;
- To encourage the ingestion and comprehension of information, multi-media formats should be provided for on a National and European level. National websites and a renovated E-Justice portal should contain not only written information, but audio and video information. In person, information should be provided for in both written and face-to-face upon contact with a victim.

5° from the early stages of information provision until the end of court hearings, communication safeguards should be implemented to ensure comprehension by all victims of crime, regardless of their linguistic and intellectual abilities, taking into consideration accessibility requirements of victims with visual, hearing and speech impairments, including victims with learning disabilities⁹⁸ and children.

6° The Commission should recommend Member States to develop simple, accessible, trauma-sensitive information to ensure that victims receive information and can make an informed decision regarding their rights to compensation. The Commission could provide for Guidance documents to Member States on development of simple, understandable, trauma-sensitive information for victims which can be directly used by Member States, authorities and NGOs. Efforts should be made to have official information also available in a 'child friendly' format, so that child victims understand their rights, but also to ensure that children of victims have the opportunity to be informed and understand what is happening in their home environment. Information and information provision should be adapted for other victims with communication difficulties. States should explore ways to have information pre-tested by different groups.

7° to implement cross-border victim's access to compensation the Commission should suggest that Information should be available in public spaces where tourists are likely to visit; airports, public transport stations, etc. Victim Support Organisation contact details should be printed on tourist maps and available in tourist information centres, which is in line with our recommendation on general awareness raising.

⁹⁸ In accordance with the United Nations' Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106), ratified by the European Union in 2010.

b) Short terms recommendations and actions to ensure that victims are sufficiently informed about how to proceed through the complex administrative and judicial procedures

Recommendation n° 13: Better information about how to proceed through the complex administrative and judicial procedures (recommendations or legislation changes)

1°- EU (through the Victims' Rights coordinator and the EU victims' rights coordination centre or DG Justice should develop a common document which sets out a description of the minimum information that a Member State must provide for victims of crime on Victims' rights and Guidelines on applying for compensation⁹⁹.

2°As Compensation schemes are complex, and victims have to trail through an enormous amount of information before finding the section which applies to their situation, this could be simplified by using a 'smart search' filter when displaying results on a website, so victims can quickly find relevant information concerning their individual situation.

3°The EU should recommend the Member States to explore the use of new technologies to improve the way victims are informed, including through artificial intelligence and support bots.

4°The EU should encourage a built-in check in the data system managed by police and prosecutors which indicates whether information has been provided, under what form, in which language in order to ensure that information is provided to victims in practise. It should not be possible to digitally surpass this checking system.

5°The Member States should establish mechanisms to control and evaluate the performance of police officers and how they comply with the obligation to inform.

6°In Member States, information should be provided repeatedly and at different stages. Primary information provided at first contact (with police officers, doctors or victim support organisations) should be repeated for the second contact with the same actors, repeated before, during and after court proceedings, and repeated by support workers within victims support organisations.

7°The Commission should recommend that Compensation authorities should develop procedures to increase transparency towards victims and other stakeholders.

Recommendation n°14: provide a legal obligation for prosecutor /judge to verify during criminal proceedings/trial whether the victim is aware of the right to claim compensation (legislative change or recommendations)

Lack of information not only represents a serious obstacle to the enjoyment of victims' rights, but research on victim satisfaction has also repeatedly identified the lack of information as a prime source of dissatisfaction with criminal proceedings, and one which discourages them from actively participating.

⁹⁹ The guidelines should include, national deadlines, Information on the interrelationship between offender and state compensation, Guidance for cross-border victims Cost of applying for compensation , support services, legal aid , a practical guide on the compensation procedure in a simple and easy-to understand language, that includes video and audio information (what forms to complete, what evidence to provide, where to submit the claim, etc.) and a Contact list of Victim Support Organisations, National Compensation Authority, local police stations, etc.

90 Measures aimed at raising victims' awareness of their rights are therefore equally important as access to information specific to an individual case¹⁰⁰.

1° The EU should require under EU legislation (or recommendations) the creation of an obligation for prosecutors or judges to inform victims and to verify during criminal proceedings whether the victim was informed about the right to claim compensation from the state and/or offender. The implementation of the obligation would be confirmed by an 'acknowledgement of understanding' mechanism (for example, a record would be made of the victims' decision to constitute civil party to the criminal case file or otherwise to pursue compensation).

The proposal would increase knowledge of the availability of the financial compensation and ways to access it. Hence the likelihood to obtain compensation would increase. The proposal would improve victims' equal treatment and reduce legal uncertainty that could arise if victims are not informed at the trial stage. As the proposal would lead to changes during criminal proceedings it could have an indirect effect on the prosecutors' or judges' consideration of compensation, hence some positive influence on whether compensation was pursued. Also, the measure would improve support as it would ensure both awareness and understanding of the right to compensation. In the absence of the proposal being implemented it is likely that judges and prosecutors may assume that victims are already appropriately informed about compensation. The proposal is likely to be more effective if it is underpinned by EU legislation because the procedures would be more systematically applied.

2° the proposal would involve EU funding for the training of national trainers and the development of EU-wide training content. (See above).

c) Recommendations to have Information available in others languages

Providing translators is invaluable to non-native victims, but often timely and expensive, and may not be viable for all Member States to achieve.

Recommendation n°15: documents and information translated (legislative changes or recommendations)

A guiding principle should remain that victims are not to be penalised within the compensation procedure for any delays caused by administrative requirements (e.g. translation of documents), authorities, or any other delay caused by the nature of a cross border application which is beyond the control of the victim. I would suggest:

1°To launch a research and analysis of the cost and impact of translation for cross-border compensation claims for national compensation authorities. The Commission should examine what is the impact of failure to translate and potential cost of translating documents. Developing cooperation mechanisms for language services should be explored which could result in reduced overall costs for all Member States to assure the correct implementation of Articles 4, 8, 9 of the Victims' Rights Directive.

The Commission facilitates the discussion between Member States to make a decision on the burden of responsibility of providing interpretation and translation – and bearing the costs – for cross-border victims at either the deciding or assisting authority.

¹⁰⁰ FRA (2019), "Justice for victims of violent crime. Part I: Victims' rights as standards of criminal justice" Luxembourg, Publication office of the European Union. (to be published)

2° To implement creative measures and flexibility to provide victims with the possibility for (informal) translation in as many languages as possible. For example, the Swedish national compensation authority has developed a system where informal translations and interpretation by multilingual staff can provide preliminary information on compensation files and procedures.

3° To explore existing technologies to allow for automatic translation of online information on compensation. Member States can allow for applications to be filled online in formats where existing technologies are able to provide preliminary translations¹⁰¹.

4° to promote English as a single common official language to be used by national authorities dealing with cross-border compensation

Recommendation n°16: To include more detailed provision in the Directives on the Member States duties concerning information to victims

Besides the necessity of the recommendations and actions presented in this section, I recommend that:

- For state compensation Article 4 of the Compensation Directive should be adapted to include more precise obligations for the national and compensation authorities including the obligation to ensure that the information is translated – so it reaches victims in a way that corresponds to their needs
- Concerning the offender compensation, the Victim's Rights Directive could also be adapted to include more precise obligations of information for the judicial authorities and the police including the need for translations.

A new provision of the Victims' Rights Directive should oblige the prosecutors or judges to inform victims and to verify during criminal proceedings whether the victim was informed about the right to claim compensation from the state and/or offender. The implementation of the obligation would be confirmed by an 'acknowledgement of understanding' mechanism (for example, a record would be made of the victims' decision to constitute civil party to the criminal case file or otherwise to pursue compensation).

3. EU initiatives for better training and guidance to ensure respectful treatment of victims in state and offender compensation schemes

We share the analysis of the Fundamental Rights Agency stating that "Providing relevant training is another crucial element to ensure that victims' rights are guaranteed and translate into the provision of appropriate victim support. All persons likely to come into contact with victims, such as police officers and court staff, and those providing victim support and restorative justice services, should receive such training. To be effective, training needs to cover both the need for a sensitive approach to victims, especially regarding particularly vulnerable groups, and specialised knowledge, again with an emphasis on certain groups of victims". EU should analyse the need to adapt Article 25 of the Victims' Rights Directive to be more precise about concrete initiatives to be taken by police and prosecutors. Ensuring compulsory general as well as specialist training for officials, who are likely to come into contact with

¹⁰¹ Good practices from Sweden where compensation authorities allow for information translations from governmental staff to facilitate compensation claims in different languages are a source of inspiration

victims, such as police officers and court staff, will require increased efforts in a number of EU Member States.

While the primary responsibility for ensuring training, particularly under the Victims' Directive, lies with the state, training organised and provided by non-state actors is widespread.

Providing a respectful treatment from compensation authorities should be at the heart of any state compensation system as part of the rights-based approach. Ensuring compensation authorities to approach victims in a sensitive and humane manner requires a careful combination of leadership, recruitment strategies¹⁰², training, development of tools for on-going monitoring and evaluation procedures. Cultural change within authorities cannot be achieved through training by itself. It is important to ensure that law enforcement, judicial authorities, state compensation authorities and victims' services providers are capable and trained to provide complete, trauma sensitive, personalized and timely information to victims. The recommendations of this section should be prepared and provided by the EU coordination centre for victims' rights or, if the option is not chosen, by the Commission (DG Justice

Victims' issues (victims' needs, rights, reactions to crime, etc.) should be part of basic training for lawyers, social workers, health care workers) We agree that more needs to be done in the field of information and training. It is of particular importance that such measures are anchored in a strategy. The first and elementary training measures should be directed at all victims and - as a next step - further efforts could be made which are focused on groups of victims considered as vulnerable.

Recommendations n°17 : Recommendations and guidelines from the Member State to develop obligatory, high quality training of all professionals who have direct or indirect contact with victims (recommendations or legislative change)

1° The Commission should recommend or the EU should impose in the revised 2004 Compensation directive (state compensation) and the Victims' Rights Directive (offender compensation) the development of obligatory, high quality training of all professionals who have direct or indirect contact with victims. That would include police, prosecutor, judges, lawyers, health care workers victim support services and professionals, consular, embassies to improve institutional capacity and address the problem of lack of information and clear guidelines. Training on how compensation authorities should communicate with victims orally and in written form, projects & guidelines on the way to communicate – what could be harmful and what constitutes positive language could be also of great importance.

2° The Commission should recommend that specific training be provided to compensation authorities to assist specific groups accessing their right to compensation such as victims of terrorism.

After terrorist attacks compensation authorities should be equipped to support large groups of victims with particular needs in a swift and effective way. Continuous follow-up training and supervision should allow compensation authorities to revise and improve their approach in individual cases and in general.

¹⁰² Recruitment procedures should aim at selection of victim-sensitive staff members who are able to combine professional skills with humane and flexible approach to victims and their environment. Respectful and humane treatment builds on a comprehensive human resource strategy that ensures enough staff to assist victims claiming compensation. In many Member States compensation authorities are understaffed and forced to limit the time they spend on compensation cases below what is needed.

3° Further guidelines and tools on the way to communicate and train should be provided— what could be harmful and what constitutes positive language should be developed and provided to national compensation authorities by the EU coordination centre for victims’ rights.

4° Monitoring and evaluation systems should be implemented and communicated in a transparent way. National compensation authorities should envisage continuous monitoring mechanisms to ensure victims to be treated respectfully in order to prevent secondary victimisation.

5° An EU funded training for national trainers and EU-wide training content should be put in place. EU organisation of mutual trainings between national compensation bodies and victim support organizations are also necessary to improve handling of compensation claims and minimize the risk of secondary victimization.

4. EU initiatives for quicker, fairer and simpler state compensation scheme

a) Need for a clear definition of “victims eligible for compensation” and “intentional violent act” (legislative change)

Across the EU definitions of who is a victim of crime differs from one Member State to another. This has a direct impact on who has the right to claim compensation, and under which conditions. As presented in the current report, direct victims, indirect victims, first responders, and the community as a whole can all feel the effects of victimisation. For the latter categories, especially the family of victims¹⁰³, varying definitions and their unfolding rights create an uneven playing field for victims across Europe¹⁰⁴. As explained in details in the problems section the 2004 Compensation Directive leaves a great margin of discretion on the definition of victims eligible for compensation, and on intentional violent crime.

Yet even if there is a wide margin for restrictions, based on ECJ case law, EU rights must be practicable. In other words, restrictions should not operate to the extent that most victims of violent intentional crime are excluded from compensation. I suggest adopting a revised definition of victims that would be both feasible and fair.

Recommendations n° 18: Definition of “victims eligible for compensation” (legislation change)

There are diverse ways in which an individual can be harmed (physical, psychological, social, financial, vocational, and practical). The crucial point is the recognition of harm and the consequences it has on the individuals. It can be the direct victim or the indirect victim such as the victims’ families when the direct victims died or have survived or the first responders.

¹⁰³ By ‘family’ we adopt the largest sense of the word, including partners, close friends, cohabitants, etc.

¹⁰⁴ Relatives of victims of intentional violent crimes are not eligible for compensation in six Member States from 25 we managed to receive information from

Different definitions may apply for different objectives or in different fields. The definition of a victim may be more restrictive for the purposes of financial compensation than for the purpose of support: (witnesses, public).

Another issue is that to know who is victim is not always clear. For example, in a situation of a terrorist attack it is clear who the victims are and who are the offenders. But there are situations in judicial practice that are “not black and white”¹⁰⁵. For instance people who start a fight in a pub. They hit each other and one of them is severely wounded or even both are wounded. Both of them could claim compensation if they are prosecuted. It may be so that one of them is prosecuted and the other one is not. In these cases there is a certain “culpa in eligendo” and there is less reason for solidarity by the state.

1° The Commission should organise expert groups and consultation to help them provide a clearer definition of victims of violent acts eligible for compensation.

For the application of the 2004 Directive, one recommendation of definition of victims could be:

- The direct victim who has suffered harm, including physical, mental or emotional harm or economic loss which has been caused directly by an intentional violent crime.
- Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death. ‘family members’ means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependents of the victim (art 2 of the victims’ rights directive)
- The family members described above who have suffered harm as a result of the victimization of the direct victim (The UN Basic Principles).
- First responders who have suffered harm in intervening to assist victims in distress (The UN Basic Principles)

Such a definition of victims is reasonable and ensures that a group of victims (including first responders) is eligible for state compensation *sense largo* that comprises the psychological support.

Recommendations n°19: extended definition of “victims eligible for compensation” to EU citizens and residents victims of intentional violent act who were victimised outside the EU and to victims of intentional violent act committed in the EU, irrespective of their nationality or residence status (legislative change)

Legitimate and important question is whether the principle of equal treatment should not be extended to victims of intentional violent act committed in a Member State, irrespective of their nationality or residence status so they are fully covered by the 2004 Compensation Directive.

¹⁰⁵ For instance people who start a fight in a pub. They hit each other and one of them is severely wounded or even both are wounded. Both of them could claim compensation if they are prosecuted. It may be so that one of them is prosecuted and the other one is not. In these cases there is a certain “culpa in eligendo” and there is less reason for solidarity by the state

1° New EU rules should ensure that all victims of intentional violent act committed in a Member State, irrespective of their nationality or residence have a right to compensation on a non-discriminatory basis with the EU citizens/residents'. The proposal would reduce the somewhat arbitrary variation in the eligibility of persons based on their residence status in the EU.

This would have a direct impact on only a small number of cases. It is likely that a recommendation would be less effective than EU legislation in reducing levels of and numbers of persons affected by discrimination.

2° New EU rules should also make sure that EU citizens/residents victimised in third countries have access to national compensation schemes.

Recommendations n°20: Definition of “violent intentional crime”¹⁰⁶ (recommendations or legislation changes)

The definition of violent intentional crimes which normally includes homicide, assault, sexual assault, violent robbery, trafficking in human beings, terrorism, child abuse, depends on national legislation. The question here is whether psychological and not only physical violence should be covered by the definition. It is particularly important for victims of trafficking and of gender based violence. The EU does not have a competence to define violent intentional crime. However, it is recommended that the Commission establishes a working group, of experts from different sectors (victim in general, gender based violence, children's rights, trafficking in human beings, rights of migrants, victims' rights, etc.), to recommend how notions such as violence should be defined. The concept of 'crimes against the person' concept could better reflect the reality of the different types of crime than the current 'intentional violent crime' (especially in the case of gender-based violence). The value of human dignity should be at the centre of the approach to protecting and supporting victims (including through compensation).

Recommendations n°21: A special status of victims of terrorism as proposed by the European Parliament

On 12 December 2018, the European Parliament resolution on findings and recommendations of the Special Committee on Terrorism (2018/2044(INI)) called on the Commission to put forward a legislative proposal on the victims of terrorism that responds effectively to victims' needs in the short and long term, including a common definition of the status of victim of terrorism and of victims' rights.

The Commission should take this recommendation into account.

b) Elimination of the possibility of unfair eligibility criteria

Reading Article 12(2) of the 2004 Compensation Directive, a strict interpretation could be applied whereby all Member States would be under an obligation to make compensation available to all victims of violent intentional crime. Member States impose however often too restrictive criteria such as the criteria based on income levels or requirement of never been found guilty for any criminal offence. The cumulative application of limitations makes the right to compensation almost non-existent.

¹⁰⁶ Concerning intentional violent act, the Court of justice made the following statement: 46 “The determination of the intentional and violent nature of a crime, as the Advocate General has stated in points 69 and 83 of his Opinion, although the Member States have, in principle, the competence to define the scope of that concept in their domestic law, that competence does not, however, permit them to limit the scope of the compensation scheme for victims to only certain violent intentional crimes, lest it render redundant Article 12(2) of Directive 2004/80.

If a country has hardly any compensation applications, or pay-outs, this shows the directive is not being applied faithfully. Restrictions can be part of the reason for this and should be examined bearing in mind principles established by the ECJ on the correct implementation of EU law.

Recommendations n°22: elimination of the possibility of unfair eligibility criteria (recommendations or legislative changes)

I therefore recommend the EU to research further into eligibility criteria practice across all EU 28 Member States, with the aim of analysing whether conditions placed on the right to access compensation are fair and appropriate. From my point of view, the Directive should clearly forbid minimum income requirement and other criteria of discriminatory exclusion from the scope of the directive or (see below) requirements to wait for or enforce the judicial decision. The only conditions that may be accepted is to legitimately ask the victim to report the crime and to accept to “initiate” a compensation procedure against the offender¹⁰⁷ in order to confirm that the crime took place, avoid impunity and to allow the victim or the state in case of upfront payment to be compensated by the offender.

c) Adaptation of Article 2 of the Compensation Directive to allow the victims to be compensated in the member State of residence

Recommendations n° 23: to allow cross border victims to access state compensation in their country of residence (legislative changes)

According to Article 2 of the 2004 Compensation Directive, the Member State where the intentional violent act occurs must compensate the victims according to its national compensation scheme. In the light of all the problems already mentioned, seeking compensation in cross border situations often proves impractical if not impossible. To avoid the most important problems faced by cross borders cases, it is highly recommended to adapt the existing rules to allow cross border victims to access state compensation in their country of residence. Under this proposal, victims would however, retain the option of claiming compensation in the country where the crime took place. This change would have the largest impact on ensuring equal treatment and legal certainty for crime victims in cross border cases. Obliging, via EU legislation, Member States to compensate in the country of residence, irrespective of the location of the crime within the EU (would be highly effective in increasing the likelihood that victims are compensated. Of course, the Member State of residence should be entitled to turn against the perpetrator of the act in the country on whose territory the crime was committed.

The obligation on Member States to compensate their own residents would both increase the likelihood that fair compensation is received in the short term and reinforce the tendency towards convergence of approaches between Member States so that in due course EU citizens who are victims would enjoy equal treatment. Moreover, the choice should be left to the victim if he wants to be compensated by the Member state on whose territory the crime was committed if the compensation scheme is obviously more favourable. In this case, the Member State of residence will have the same duty to fully assist the victim.

¹⁰⁷ by him/herself or via the state compensation authority in case of upfront payments and subrogation into the victims' rights

d) EU recommendations or obligations to set up national guaranty funds as national compensation authority and single contact point for the victims to be compensated (SC)

Delays in payment are a recurrent issue. When compensation is accorded, it is often received a considerable time after the crime took place. Regarding victims of terrorism in particular, lack of emergency payments is an important problem reported by the supported services and the victims

Recommendations n°24: on emergency payments (recommendation or legislative change)

1° The EU should adopt new binding rules concerning the grant by national authorities of emergency payments to cover the first costs (cost of family travels, funeral costs etc.) within 15 to 30 days after the intentional violent act occurred. It would result in a crucial improvement for victims if of course the victims are not covered by insurance¹⁰⁸.

2° If this option is unfortunately not chosen, the Commission will have to strongly recommend to the Member States to introduce the emergency payments in their national legislation if such a provision doesn't exist. The French FGTI can be a perfect example. It has made important strides to improve their emergency payment system resulting in a system ensures payments can be made within weeks after an attack.

Recommendation n°25: new binding provision or recommendation concerning upfront payments, subrogation of the state in the rights of the victims to claim compensation to the perpetrator and the abandon of the requirement to seek offender compensation or to enforce an order for offender compensation prior to seeking state compensation (legislative changes or recommendation)

As we mentioned in the introduction of this report, one of the most important recommendation is to facilitate victims' access to compensation by legally ensuring an upfront payment by the state. Different Member States, such as France and the Netherlands, have developed the possibility of upfront payments in different ways. Avoiding further harm to the victim has been an important argument for these systems.

1°. I therefore suggest to add in the 2004 Compensation Directive a new binding provision on upfront payments¹⁰⁹. This proposal places the responsibility for enforcement of offender compensation on the state. This proposal is one of the most efficient systems to achieve policy objectives because it would provide early compensation to the victims irrespective of whether the offender has the means to compensate the victims.

It would ensure victims receive compensation awarded to them and equal treatment and legal certainty of crime victims in cross border cases.

¹⁰⁸ Emergency payments could be seen as unfair and they may be costly, of particular relevance in member states where insurances are an important source of compensation

¹⁰⁹ Emergency payments could be seen as unfair and they may be costly, of particular relevance in member states where insurances are an important source of compensation

2° In this case, the compensation authority should have the possibility, via new EU rules to be subrogated in the rights of the victims to claim compensation to the perpetrator at its own costs for the amount awarded. If the amount of the offender's compensation granted is lower than the upfront payment, the state is reimbursed for the amount compensated. If the amount granted is higher, the difference is repaid to the victim. In the member states with a strong insurance sector, we can even imagine that in case on delays of the insurances on awarded payments, up front payments could be granted with a subrogation of the state compensation authorities to the victims' rights. It would also give a stronger position to defend victims' interests.

3° In this case, any national provision allowing the grant of state compensation conditional to different steps to be achieved in the criminal proceedings would be forbidden.

4° if the option of a binding provision is unfortunately not chosen the Commission will have to strongly recommend to the member states to introduce upfront payments in their national legislation if such a provision doesn't exist.

Recommendation n°26: on compensation funds and on good practices to increase availability of funding (non-legislative changes)

1° In addition to the recommendation on upfront payments, the EU should issue guidelines on the need to set up national guarantee funds working following the principles of the French guarantee fund for victims of terrorism. It offers to the victims a full reparation system including emergency payments and upfront payment, the subrogation in the victims' rights to sue the offender and a single contact point to avoid that victims have to launch different complex and costly procedures and have to deal with different stakeholders¹¹⁰.

2° Promotion of setting up of national compensation/guarantee or solidarity funds should include the following recommendations : Ensuring strict rules governing funding allocations; Establishing a strong decision-making body with sufficient expertise; Spending controls; Priorities for funding determined and published well in advance, following consultations with stakeholders; platform for funding applications accessible and user friendly; on-going funding streams properly monitored and evaluated; effective responsibility and accountability of beneficiaries; Budgets dispensed centrally, at the regional and/or local level, or in cooperation of different bodies at different levels, as the example from France, where the central government, regional authorities and the judiciary enter into specific arrangements. It is recommended that the mechanism for managing a victim services fund includes external resources¹¹¹, profit making from funds, disbursement of funds and monitoring and evaluation of funds should be explored.

3° After important studies and analysis of benchmarks, the EU should recommend that significant additional funding should be diverted towards victim support services. Such funding should come from external resources including compulsory insurance schemes, road fines or gambling monopoly.

¹¹⁰ See the annex V on the French system of compensation (FGTI)

¹¹¹ Funding coming from gambling monopolies, insurances taxes, offender salary fines, road fines

e) Providing for fairer and more harmonized state compensation mechanism based on a principle of reparation of the personal damages experienced and the need for support services tailored to the personal situation

Crime victims in European Union question the fairness and appropriateness of their national compensation awards. The amount of compensation awards and the way they are calculated do not necessarily correspond to the extent of the harm suffered or material damage incurred by the victim. Given this perception and the variations between Member States in the criteria used to assess and award compensation, there is a need to adopt common criteria on the assessment of the harm suffered, establishing common evidentiary requirements for major types of damages leading to victim compensation. We have to move towards more harmonized criteria to reduce gaps and diversity between the compensation amounts granted, the damages which have to be covered, the eligibility conditions. The directive should clearly abandon the possibility of payment of a lump sum to achieve the principle of compensation for personal injury to be covered. This means that the directive should provide for the type of damages which must be covered. Damages suffered should be defined at the EU level and cover objective and transparent criteria harmonizing victim's compensation, common criteria, for the calculation of state compensation.

The new directive should provide for an intermediate period of adaptation and gradual evolution with a view to arranging the transition from an assistance system to a reparation system. The MS could choose to first implement this development for victims of terrorism before extending this system to all victims of intentional acts of violence.

Recommendations 27: on new legal compensation scheme based on the concept of reparation of the damages experienced (legislative changes or recommendations)

1°EU has to prepare new legal provisions or issue guidelines and recommendations to the Member States on new legal compensation scheme based on the concept of reparation of the damages experienced.

2° EU research and EU consultation of relevant stakeholders should take place with a view to establish what elements/type of damage should be covered by state compensation and the harmonised modalities to financially compensate the damages in order to reach (progressively) a full reparation principle.

As compensation amounts is a sensitive subject for Member States, the EU could undertake re- search from experts and consultation with the stakeholders to establish a list of elements that should be covered and the amount of awards (taking into account the victims satisfaction and the cost of damage endured). It should be noted that in terms of victim satisfaction, contented- ness with any given amount is unlikely to be achieved without sufficient assistance and support during the compensation application. Such research should explore notions of fairness, appropriateness, and genuine access to rights.

The purpose is to provide for EU wide criteria for determining levels of compensation linked to the different damages, including a personal assessment of the harm suffered. (For example: promoting a list of indicative tariffs for injuries). On this basis, the EU should take a legal initiative or publish

recommendations and give concrete guidelines about the damages to be covered and the ways to compensate them.

3° The damages should be calculated on the basis of a holistic approach of the victim situation including the analysis of personalised needs. It could involve payment to other public authorities or agreed association for special support, services or reparation in kind if the concerned support services are not free. The Commission could include in the 2004 compensation directive or recommend to the Member states the possibility to include measures of reparation in kind in close cooperation with others relevant support services or administrations and the availability of numerous multidisciplinary free support services (SC). By multidisciplinary free support services, we can mention family care, health care not included in social security, resilience and post-trauma accompanying, professional reintegration, mobility support, practical support.

f) Less costly and complex state compensation procedures at national and cross borders levels

Victims, stakeholders and victim support organisations, all unanimously argue that the requirement on the victim to seek and provide evidence, complete complex administrative forms, under- take medical examinations and gather various official reports is unfairly onerous and burdensome. The procedure to apply for compensation is so complex that it dissuades potential applicants, creating an actual barrier to accessing compensation. For those victims who have endured the journey of applying for compensation, they testify that the experience lead to secondary victimisation, and left them feeling disrespected by national authorities. A key aspect is also to ensure improved contact between the relevant authorities as well as ensuring that response from competent authorities can be guaranteed in the management of cross-border applications.

Recommendations 28: On the simplification and digitalisation of the national compensation procedure (legislation changes or recommendations)

EU should recommend the following guidelines:

1°As a general recommendation, Member States must endeavour to simplify their national compensation schemes. This can be achieved by any of the following means: reducing the number of documents required to submit a successful application; digitalisation of documentation (including digital signatures – to avoid victims’ travelling to another Member State; facilitating translation of documents (not at the charge of the victim); facilitating online systems of claiming compensation; creating an online chat and/or a telephone help line where victims can directly seek guidance with certain aspects of the procedure.

2° One concrete recommendation should be to simplify the administrative burden on victims by the creation of a digital compensation dossier¹¹². The ultimate purpose of a digital compensation dossier is that for any proceedings, victims have easy access to their own personal documents needed to facilitate a compensation claim. Once a claim is submitted, the digital dossier can also serve as a platform through which victims can follow the progress of their claim. Starting with soft measures, Member States should start working on digital means for victims to apply for compensation.

On an EU level, creating a European-wide digital system would greatly benefit cross-border victims and would help in creating a uniform approach to compensation claims in the EU. However, it is recognised that such digitalisation across borders requires common software recognition¹¹³.

3° Establishing common evidential requirements for major types of damages leading to victim's compensation. This measure would contribute to the equal treatment of cross border victims and to the application of common standards. Most likely, such standards would need to be minimum standards. It would be helpful if such common evidential requirements existed from the point of view of citizens spending time in different EU Member States. It would be more likely that victims would ensure that the evidence needed for valid applications and accurate assessment of compensation levels was recorded. This in turn would increase the likelihood that they proceeded with applications and that such applications were successful.

4° Developing a common application form, including common evidential and eligibility criteria for victims to use when applying for cross border cases compensation. The proposal would contribute well to all policy objectives. The availability of a common application form would increase access to pertinent information and the awareness of victims compensation schemes in cross border cases. Victims that completed applications would receive decision relating to their case and the proposal would improve their chances of receiving compensation relative to the status quo. The technical feasibility of the outcome of the study is likely to be high. There are no major technical constraints to devising a common application form. This proposal would be more effective if implemented in concert with the proposal to establish common evidential requirements.

Recommendation 29: Provision waiving the administrative fees (legislation changes or recommendations)

The EU should provide for recommendation or a provision waiving the administrative fees linked to applications for State Compensation. This could for example involve waiving the obligation to pay an administrative fee upon submission of application, even if such fees were later imposed when compensation was received or deducted from compensation obtained. The process of victims applying is potentially difficult for the applicant and the requirement to pay a fee might act as a deterrent to apply. This proposal would improve victims' access to compensation regimes and would, if adopted by the small number of countries that apply fees, in effect, harmonise procedural rules across the EU.

Recommendation 30: a right to have a decision on compensation reviewed (legislation changes or recommendations)

I suggest the introduction of recommendation or an obligation to provide a review of decisions on state compensation. This proposal would have an impact on the number of victims accessing financial compensation. It would also introduce a beneficial minimum standard and enhance the equal treatment of victims between Member States and the coherence of national legislations. It would require adaptation to Article 11 of the Victims' Rights Directive by extending a right to revision to the decision on compensation (on the top of the decision not to prosecute).

¹¹³ Recommendations 25 : On the simplification and digitalisation of the national compensation procedure (legislation changes or recommendations)

5. EU initiatives to improve the offender compensation to the victims within the judicial proceeding

- a) A «compensation measure» in the form of an accessory penalty related to the financial capacity of the offender that would exist along with civil claim, decided by the judge ex officio and enforced by Member States.

Recommendation 31: the introduction of a «compensation measure» in the form of an accessory penalty related to the financial capacity of the offender (legislation changes or recommendations)

The EU should take actions to ensure that victims can effectively receive compensation from the offender. I suggest to recommend or to adopt a new provision on the introduction of a «compensation measure» in the form of an accessory penalty related to the financial capacity of the offender that would exist along with civil claim, decided by the judge ex officio and enforced by Member State.

It would reduce the likelihood that offenders avoid paying compensation. It would also reduce the costs and delay associated with victims pursuing compensation in civil courts. There are also potential benefits in cross border cases where the pursuit of claims by non-national victims may be especially problematic and decisions taken by the judge and enforced by a court could increase the likelihood of compensation being received.

- b) **Improvement during the judicial proceeding**

Recommendation 32: On minimum deadline for lodging a compensation claim in criminal proceedings (legislation changes or recommendations)

I suggest that the EU rules (for instance a revised Victims 'Rights Directive) include minimum procedural deadline for lodging a civil claim in criminal proceedings in the Member States other than common law Member States having compensation orders in place.

This proposal would increase the number of victims having access to offender compensation because obstacles related to time period and eligibility would be reduced.

Recommendation 33: On pre-trial mediation/restorative justice to enhance victim's re-adaptation to society and act as a form of offender compensation (legislation changes or recommendations)

I suggest to include in the EU rules (for instance a revised Victims 'Rights Directive) or to recommend the use of a pre-trial mediation/restorative justice as a part of the compensation to the victim. For example, reconciliation between victim and offender and cash or in-kind payment of compensation prior to the trial may have mitigating effects and lead to conditional discontinuance of proceedings in less severe offences (for example those punishable by less than 5 years' custody sentence).

This proposal promotes an option which would ensure higher level of support to victims in seeking restorative justice corresponding to their needs.

Recommendation 34: On legal aid (legislation changes or recommendations)

Access to legal aid, notably access to legal aid free of charge, represents an area of rights that is closely linked to the role of the victim in the system of criminal procedure. It includes legal advice and legal representation in court (Article 13 of the Victims' Rights Directive). More generally, it also covers interpretation and translation expenses (Article 7), and possible reimbursement of other expenses (Article 14). The Victims' Rights Directive does not oblige EU Member States to reimburse legal fees, as if there are any they can be covered by legal aid. In practice, free legal aid is generally available to victims in nearly all (26) EU Member States. In most cases however victims are subject to an economic means test from which only certain categories of victims should be exempt.

1° the Commission should encourage /or impose on Member States to exempt victims of violent act from the means test.

2°The Commission should analyse national income restrictions to accessing legal aid, examining whether these criteria present an obstacle in victims' access to compensation in practice and on this basis include a provision in the directive to extend the application of legal aid to victims of violent acts according to harmonized conditions.

Recommendation 35: On undocumented migrants access to compensation legislation changes or recommendations)

Access to redress mechanisms for all victims of crime must be guaranteed in practice as it is in law.

It is widely documented that undocumented migrants, and those awaiting a decision regarding their residence status, are discouraged to report a crime due to beliefs that their information will be shared with immigration authorities, or due to negative experiences with law enforcement agencies in the past

EU should recommend:

1°Acknowledging the particular vulnerabilities of migrants, it is essential that all EU Member States take immediate action to alleviate the obstacles for migrants to report crime and to seek protection. A clear firewall needs to be established between local police stations and immigration authorities. National Member States must not create hierarchies of 'illegality' which place the individual's residence status as a 'more important crime' than the crime of which they are reporting.

2°That Member States must also guarantee access to legal advice for undocumented migrants, and access to victim support services.

3°Migrants who seek medical assistance following a crime should be offered protection, and Member States should ensure that medical information and knowledge concerning the individual's presence in a medical service is not communicated to immigration authorities.

c) Recommendations addressing difficulties in enforcement of offender compensation

There are four new provisions which could address the problem of enforcement of offender compensation. These are to some extent alternatives in that there would be little merit in combining, for example, upfront payment of compensation to victims with the reimbursement of bailiff's fees.

Recommendations 36: On the duty for the State to cover or reimburse bailiffs' fees for the enforcement of the offender compensation decisions (legislation changes or recommendations)

The EU should recommend that State cover or reimburse bailiffs' fees for the enforcement of the compensation awarded in criminal proceedings for victims (without sufficient means). This proposal would introduce a higher level of support for victims (without sufficient means). In doing so it would increase their likelihood of receiving awarded compensation from the offender.

Recommendation 37: On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post trial stage (legislation changes or recommendations)

The Commission should encourage/require the Member States the introduction of mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial or post trial stages. Examples of such incentives include: attaching financial conditions to deferred or suspended sentences; improving effective use of the compensation element in probation measures by formal sanction on failure to compensate and/or proactive obligations on authorities to confirm whether the victim has been satisfied within the deadlines and ex officio obligation to reinstate suspended proceedings.

Recommendation 38: On mechanism that will require offenders to pay towards funding of victim support services or the state compensation scheme (legislation changes or recommendations)

This proposal involves the introduction of offender surcharges' and a mechanism that would require offenders to pay towards the funding of victim support services or the State compensation schemes. The surcharge could, for example, be based on a fixed proportion of earnings of each convicted.

d) Confiscation as a more generalized mechanism to help the victims to be compensated

Confiscation is a strategic priority in the EU's fight against organised crime. It is reflected in the EU Internal Security Strategy in Action, which confirmed the need to revise the existing EU legal framework on confiscation and asset recovery to hit criminals where it hurts them most. Five EU legal instruments aim at improving confiscation and asset recovery¹¹⁴. However, their implementation has shown certain weaknesses. Thus, the Commission proposed in November 2008 ten strategic priorities on confiscation and asset recovery and emphasised the importance of enhancing cooperation between EU States in tracing assets.

¹¹⁴ Recommendation 35: On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post trial stage (legislation changes or recommendations)

In 2018, the EU has adopted a new legislation¹¹⁵ (Regulation on the mutual recognition of freezing orders and confiscation) to make it easier for EU states to confiscate assets derived from serious and organised crime and protect our economies, simplify existing rules and fill important gaps which are being exploited by organised crime groups. It will enhance the ability of EU states to confiscate assets that have been transferred to third parties, it will make it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no action is taken. The Recommendation also makes it easier for victims to access to ceased and confiscated assets in other Member States. The process should now continue at national level, where national authorities should facilitate victims' compensation (including restitutions) from the assets confiscated from the offenders.

In specific crime areas, such as trafficking in human beings, the European Commission continue promoting the use available legal instruments and to consider the use of seized and confiscated instrumentalities and the proceeds from the trafficking offences to support victims' assistance and protection, including compensation of victims.

6. EU initiatives for more adequate, multidisciplinary and more personalised support services in accordance with victims' individual needs

While in the last few years we have witnessed a strengthening of the number, professionalism and multidisciplinary aspect of services to help victims, whether public or associative, we still have to see many shortcomings

Recommendation 39: need for multidisciplinary support services (legislation changes or recommendations)

There is still too little immediate and short-term care to provide psychological (post-trauma and resilience support) and practical support (arranging the travels of loved ones, childcare, moving or resilience etc.) The provision of services to victims does not take sufficient account of or is not organized to take into account the individual needs related to the characteristics of the person. In addition, Member States with many budgetary problems do not adequately support public services for victims or subsidies to victims' associations.

Many victims point out that victims' support services as a key factor in their ability to recover, feel recognised and request compensation. Support through administrative assistance, psychological, post-trauma or resilience guidance, advice and information on success rates and procedures are identified as helpful to victims as an additional part of a compensation scheme and sometimes much more helpful.

It is important to assess with victims' support organization whether the obligations of the directives concerning support services are concrete and detailed enough and also tailored enough to answer to the individual needs to sufficiently offer in the member state efficient tailored multidisciplinary professional services including More concrete provisions could include the results of this assessment. Victim organisations provide valuable support to victims but parallel to this, given the responsibility of the state it is critical that victim support structures are available and provided by the state in all

¹¹⁵ Recommendation 35 : On mechanisms that give offenders an incentive to pay compensation awarded to victims at pre-trial stage or at post trial stage (legislation changes or recommendations)

regions/municipalities of the member states. Support for victims has indeed to more explicitly cover the following needs: emotional and psychological; practical; advice on compensation; vocational or educational; access to justice, medical. Protection. Victim/family assistance centres can form important mechanisms in ensuring they are synchronised and made available. Victims must have access to more adequate, multidisciplinary and personalised support services in accordance with victims' individual needs. They have also need for quality assured and monitored.

The European Commission could develop projects, research and guidance to assist Member States with their crime victim compensation programs as part of a general strategy to develop comprehensive assistance to all victims of crime .The guidelines could identify best practices, and ideally provide detailed information on how those practices were developed, function and what the costs are free.

The EU should recommend or include increased obligation concerning the multidisciplinary support services to be offered or subsidized by the state, the level of availability and funding of Support services in the victims' rights directive. The European Commission should develop funding's, projects, research and guidance to assist Member States in this area. The guidelines could identify best practices, and ideally provide detailed information on how those practices were developed, function and what the costs are. The guidelines should include recommendations to Member States on how to ensure that victims have access also at local level to general, specialised and personalised victim support services when claiming compensation.

Recommendation 40: need for victim's navigators or referents

Many countries are waiting for the victim to contact them and do not organize offers immediate support. There are very few cases with referrals assigned by victim to coordinate the response to all of their needs.

Each victim should be provided with one referral or navigator to first take contact with the victim to daily support them in the best way in respect of each authorities, for each procedure, to coordinate support on basis of the best common and personal approach possible.EU should therefore oblige or recommend to provide for "victims' navigators" or "case agents to help victims in their contacts with different authorities.

Recommendation 41: Need for resilience platforms

The term resilience¹¹⁶ covers different meanings. Its use may be medical, it can also be applied more broadly to a person or a society as a whole that manages to remain standing despite the extreme violence she is suffering. Medical, resilience is therefore also social.it looks at the person as a whole and at society in all its dimensions. Resilience refers to both an individual journey and its study, as defined by the Professor Boris Cyrulnik¹¹⁷ who describes it as "a process, a new development (after a trauma), not an inherent quality of the individual" and "the study of the conditions for the recovery of a development after trauma". As stated in the new rule of the Counter-terrorism Directive, support for victims of terrorism should be made in the aftermath as well as in the long-term for as long as needed. Such long-

¹¹⁶ « Résilience d'une nation », Les grands colloques de l'AAIHEDN, Lavauzellen, Avril 2018 ; Françoise Rudetzki « Pour un centre de ressources et de résilience : reparler et prendre soin de la vie », Rapport déposé en décembre 2016, puis remis officiellement à Monsieur le Président de la République et à Madame la Secrétaire d'Etat auprès du Premier ministre, chargée de l'aide aux victimes, le 8 février 2017

¹¹⁷ La résilience : un processus multicausal. Boris Cyrulnik, Revue française des affaires sociales, 2003-1.

term support should include post trauma and resilience support-givers and those in contact with victims and mainly victims of terrorism should be available and trained to give appropriate support in case of trauma. Particular attention should be given to phases of transition from immediate to medium and from medium to long term. Victims of terrorism need consistency and quality throughout their recovery process and post trauma development.

Within the expertise department of the proposed EU coordination centre for victims' rights, post trauma and resilience expertise should be developed by the EU victims' rights coordination centre to the Member States and by themselves and EU and national resilience platforms should be set up in close cooperation with the future French resilience centre which could also have an important European mission or could become also a European resilience Centre.

To conclude this last essential recommendation in French with one of the best expert in resilience « *Le malheur n'est jamais pur, pas plus que le bonheur. Un mot permet d'organiser une autre manière de comprendre le mystère de ceux qui s'en sont sortis : la résilience, qui désigne la capacité à réussir, à vivre, à se développer en dépit d'adversité* ». ¹¹⁸

IV. CONCLUSION

To conclude in a more personal way, I would like to stress that strengthening victims' rights is a **key political issue**. It is not a minor topic to be left aside or to be regarded solely as a matter to be dealt with by the good intentions. Protecting victims is equally important as prosecuting terrorists or preventing violence.

Taking care of the victims of violent acts is not only about fulfilling legal obligations and ensuring individuals' right to be protected. **Taking care of the victims of violent acts is, above all, a matter of human dignity, solidarity, and respect.** It is the symbol of a real democracy for which each person counts and deserves to be protected, supported, helped, integrated and reinserted. **How we treat victims of crime measures the depth and humanity of our civilisation.**

By taking care of victims, we are demonstrating that there are no forgotten citizens in Europe whose distress, trauma or disability would not be a collective emergency. It is why defending and strengthening victims' rights has to become now, more than ever a real political and common emergency for the Commission, for Member States and society.

We need to reaffirm our commitment to defending and strengthening victims' rights but also to improve our objectives, methods and actions. In light of all the threats and challenges that the European Union is facing today, we need to stand firm with the most vulnerable among our citizens.

By strengthening victims' rights we are showing and proving to European citizens that are living in a Humanistic Europe that protects, cares, repairs, supports, and offers a new beginning for everybody.

Only such Europe, contradicts in all respects the foundations of acts of terror and violence.

What else can be more motivating for the next Commission than launching a new ambitious and humanistic EU strategy for EU victims' rights' strategy?

¹¹⁸ De Boris Cyrulnik / Antoine Spire - Le Monde de l'éducation - Mai 2001

IV. ANNEXES

ANNEX I : GENERAL NEEDS OF VICTIMS OF VIOLENT CRIME¹¹⁹

It is important to understand the different ways that crime can affect victims—psychologically, financially, physically, psychologically, socially and spiritually¹²⁰. Understanding them, in turn, leads to understanding the needs of victims of crime.

There are many needs that are common to all victims, such as the need for information, the need to respectful treatment and the need to understand the proceedings. According to Victim Support UK, research has found that the most frequently expressed needs include emotional support or someone to talk to; a single point of contact; information from the police; updates on the progress of the case; and guidance to help prevent secondary victimization¹²¹.

These common factors allow us to make comprehensive decisions for victims of crime as a singular group. However, it is important to acknowledge the existence individual factors. These cannot all be predefined very precisely, as every individual will react to a crime in a manner unique to themselves. In this view, it is imperative that a generalisation about victims' needs does not override the existence of individual needs.

With a knowledge of both common and specific needs, we can develop uniform comprehensive recommendations covering all victims whilst establishing flexibility in the system to address individual and group needs. From existing knowledge and expertise in the field, Victim Support Europe summarises victims' needs within five broad headings:



Figure 1: Victims' needs

¹¹⁹ Contribution of Victims' Support Europe

¹²⁰ Wasserman, E., Ellis, C.A. "Impact of Crime on Victims". Retrieved from: <https://ce4less.com/Tests/Materials/E075Materials.pdf>

¹²¹Victim Support UK, "Understanding victims of crime". Retrieved from:

https://www.victimsupport.org.uk/sites/default/files/VS_Understanding%20victims%20of%20crime_web.pdf

These five fundamental needs are consistent with the aforementioned research and form the foundations of the EU Victims' Directive 2012/29/EU.

RECOGNITION AND RESPECTFUL TREATMENT

All victims of crime need and have a right to have their experiences and feelings recognised by the people and institutions they interact with. This concerns victim support organisations, compensation authorities, police officers, judges, medical professionals, and anyone else who might come in contact with victims – including private sector entities such as insurance companies. Furthermore, victims need to be treated with dignity, respect, and sensitivity, both at every stage of the criminal proceedings and while in contact with victim support or restoration services. These needs are highlighted on various occasions in the Victims Directive, including the 'Objectives' section: *"Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status."*¹²²

It is important to reflect that respectful treatment is manifested not only in the way that individuals interact with victims but also the way the system is established. Procedures which are not transparent, decisions which don't involve or inform victims, long delays in process are all examples of a systems being designed in a non-respectful way.

SUPPORT

The trauma of victimisation can have a profound and devastating impact on crime victims and their loved ones. It can alter the victim's view of the world as a just place and leave victims with new and difficult feelings and reactions that they may not understand.

Victims of crime experience various short- and long-term emotional and psychological effects. Victims of violence describe feelings of shock and loss of trust in society, and guilt at becoming a victim of crime, as they typically feel they could have prevented the incident from occurring. Violent crime can also cause victims to feel a sense of uncertainty and disempowerment and to feel more vulnerable, leading to high levels of worry about personal safety. Violent victimisation has also been found to be linked to the development of symptoms of fear, anxiety, depression or confusion, sadness, anger and stress.¹²³

One victim who interviewed talked about the physical injuries suffered such as broken ribs and spine, lung surgery etc, inability to work, relying on unemployment benefits for two years until a compensation decision was made, psychological problems such as insomnia and panic attacks, and more generally a withdrawal from society and a feeling of loneliness and distrust.

122 Directive 2012/29/Eu Of The European Parliament And Of The Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

123 Victim Support UK, "Understanding victims of crime". Retrieved from:

https://www.victimsupport.org.uk/sites/default/files/VS_Understanding%20victims%20of%20crime_web.pdf

Support is an essential tool to help overcome this trauma, assist victims with the many procedures after a crime, and to help them recover. Support may be practical, informational, legal, administrative, psychological, emotional, or other.

Victims' need to be supported usually is satisfied by victim support professionals, but it also extends to all professionals who come in contact with a victim. Around the EU, various organisations provide continuous psychological, emotional, and legal support to all victims of crime. However, there are still many challenges associated with providing effective and well-distributed support network in all EU Member States.

Embedded within the need of victim support is the basic need of information. Victims need information to understand what their rights are and how to access services, what the impact of crime might be, how to access services and where to find additional information. This information must be provided and provided in a way that victims can understand whilst they themselves feel understood. The psychological consequences of crime or violence will inhibit the way information can be sought and understood. Therefore additional efforts are needed to ensure victims are provided with information in a simple and accessible manner.

ACCESS TO JUSTICE

The need to be informed about the proceedings and participate in them falls under 'Access to justice'. Anyone who has become a victim of crime needs to be able to access justice. This need can be translated into the right to participate in criminal proceedings, the right to a review of a decision not to prosecute (Article 11 of the Victims Directive). Essential to effective participation is transparency of the procedure coupled with sufficient and comprehensible information that victims are able to enforce, and respectful treatment.

PROTECTION

Victims need to be protected from further victimisation (such as repeat victimisation from the offender and/or secondary victimisation). Many of the rights established in the Victims' Rights' Directive are focused around the minimisation of secondary victimisation. In other words, measures to reduce the harm caused to the victim by the reactions of individuals, State authorities and the wider public in particular as a result of their participation in criminal proceedings and other proceedings relating to the crime e.g. the compensation process.

For example, it can be highly traumatising for a victim to have to recount the crime on repeated occasions. Criminal proceedings can be organised to minimise interviews and indeed the Victims Directive states in Article 20 that the number of interviews conducted with a victim should be kept to a minimum as should the number of medical examinations with both being limit by a strict necessity test.

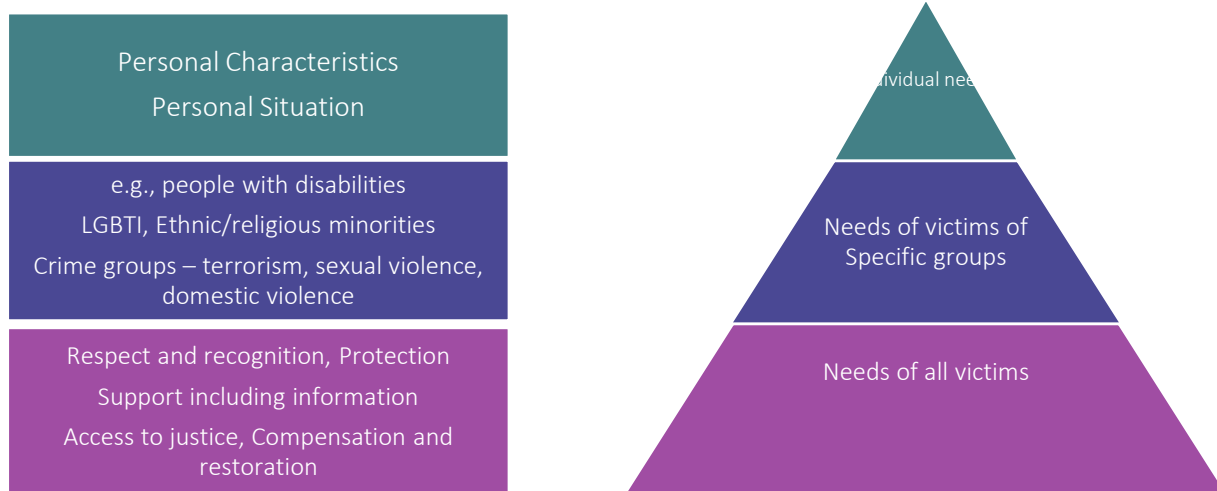
COMPENSATION AND RESTORATION

Compensation and restoration are needs of victims in their own right. However, it should be remembered that in meeting this need, the others needs should also be accommodated. For example, during the application process, a victim should be treated with respect and dignity, victims are likely to need support in completing the process, and the process should be clear and transparent to minimise any secondary victimisation.

Compensation/restoration is a need which transcends the need for financial assistance. The need for restoration is highlighted through the right to restorative justice services in the Victims Directive.

Whilst the above summary of needs are common to all victims, the way that these needs manifest themselves, or the most appropriate responses may need to vary depending on each individual. Needs can often be common within specific groups of victims such as victims of a certain type of crime, or victims with certain characteristics – from a certain religion, ethnicity etc. At the same time, the individual needs of victims will vary widely depending on a number of factors, including personal characteristics of the victim such as age, gender, gender identity, race, religion, sexual orientation, health, disability, residence status, communication difficulties etc.; the impact of the event; earlier victimisation or stressful life events; (mental) health; social network; socio-economic situation; and daily stressors. At the individual level, needs are primarily determined by the personal characteristic and environment or situation that a victim is in. For example, a mother on welfare with two young children and no close family will face a different set of problems to a single person, wealthy person, with a large social network of support – as well as having some needs which are the same for all of them.

The key approach to support victims and to meet their needs, is to recognise how the needs of victims differ and to assess the specific needs of individuals. This is important as it helps governments and organisations to develop common responses as well as individualised approaches. The principle of combining a common understanding of victims’ needs with ample attention for individual needs and assessment is promoted in the Victims’ Rights Directive, in particular through Article 22, which defines an individual assessment of victims to identify specific protection needs. Finally, the personal characteristics and situation of each individual will influence the impact of victimisation, the needs of that particular victim and the most appropriate response.



The needs of victims can be identified in terms of those common to all victim, those specific to certain groups, and individual needs of each person.

Reflecting on the changing needs of victims depending on their situation or crime, two particular groups – victims of terrorism and cross border victims, are examined in more detail below.

Annex II :

Summary of the Survey launched in the Framework of this report by victims' support organisations on the needs of victims of terrorism in relation to compensation

According to a survey conducted by victim support association among the victims of terrorism (Study on victims of terrorism conducted by Victims' support Europe and V Europe, 233 responses were received, of which 141 were victims of attacks in France, 39 victims of attacks in Belgium and 11 in Spain. As such, we must acknowledge that a disproportionately high reflection of the French compensation scheme and victim assistance network is presented through these results.

From the 223 victims of terrorism who responded to our survey, 56% are direct victims, and were present at the time and place of the attack. 23% of respondents are family members of direct members victims, making them what is commonly recognised as 'indirect victims'. 79% of all respondents were residents of the country where the attack took place. 86.5% of respondents claimed compensation, of which only 56% had access to emergency payment.

In response to our survey, victims of terrorism highlighted principal needs that, in their opinion, should be taken into consideration in ensuring access to fair compensation. We gathered over one hundred individual responses, with the most commonly cited needs represented in the below graphic:



Figure 2 Victims' needs in relation to compensation

The most common need cited by victims in the survey, is the need for psychological support. Most European Member states do not offer free-of-charge psychological follow-up. Moreover, those who offer some level coverage often limit this to several sessions, falling short of what victims actually need. This is therefore a necessity which victims believe should be covered by compensation. The psychological consequences faced by victims and indirect victims of terrorist attacks is well known requiring that victims of terrorism receive immediate, continued and tailored therapy.

Some victims may not develop signs of trauma until many years after the attack, especially in cases of Post Traumatic Stress Disorder. In this light, victims highlight the importance of financial intervention for psychological treatment not only in the immediate aftermath of an attack, but for as long as it is necessary.

Yet cost considerations are not limited to the expense of a single consultation. Psychological trauma is often accompanied by wide-reaching economic consequences, including; adaptation of living arrangements, reduced earnings due to loss of productivity through work absence and/or early retirement, greater probability of divorce, cost of medication, hospitalisation and additional therapy sessions etc.

This helps to explain why **FINANCIAL NEEDS** was the second most commonly cited need, which should be taken into consideration in ensuring access to fair compensation. Victims repeatedly referred to the need for immediate financial assistance under the form of an emergency payment to cover loss of earnings, medical costs, and rehabilitation expenses immediately after an attack. As one victim highlighted in response to our question on what they would like to see change:

'The State taking its responsibility and ensuring quick and easy access to compensation. No previous administrative requirements. Clear defined amounts. No deadlines.'

COUNTRY FOCUS: BELGIUM

Accessing psychological support may be difficult and costly.

To use Belgium as a working example, psychologists work independently and establish their own tariffs. The average cost for a one-hour consultation in Brussels is 50 euros, with prices varying according to the psychologist and the needs of the patient. Nevertheless, price per consultation rarely falls below 40/45 euros per hour. Health insurance can reimburse up to 15 euros per consultation depending on the patient's financial situation, but it limited to a total of around 180 euros of total reimbursement per year (depending on your health insurance plan and income level). Aside from independent psychologists, mental health facilities with multidisciplinary teams exist throughout the country, offering a cheaper alternative for psychological treatment, but the average waiting time for a consultation at the time of writing is a reported 6 months (in Brussels, waiting times vary geographically) . Belgium is not a stand-alone example. Saturation of mental health services, costly consultations and long waiting times have been recorded across Europe .

Sources:

- Interview with an independent Clinical Psychologist, based in Brussels and member of the *Fédération Belge des Psychologues*, 09.01.2019.

- Monetary information from the website of Belgian Healthcare Insurance provider *Mutualité*

Victim interview testimony, victim of terrorism questionnaire

RECOGNITION and acknowledgment of the victims' status as such was also a frequently mentioned need. This need highlights that compensation is not restricted to purely financial awards but covers a range of compensatory facets. An example of recognising a victim of terrorism can be seen through the National Recognition Medal for Victims of Terrorism¹²⁴ in France, and the Royal Order of Civil Recognition for Victims of Terrorism in Spain¹²⁵.

Victims spoke about not only their need to be recognised as victims per se, but also the importance of recognising different forms of damages, such as varying degrees of psychological trauma – both suffered by direct and indirect victims.

Victims recommend that compensation must take into consideration the need to recognise and acknowledge damage caused, loss incurred and the continued psychological trauma which victims of terrorism experience daily.

Victims also raised the need for **PRACTICAL SUPPORT AND ASSISTANCE** in ensuring access to fair compensation. Assistance with the administrative process, professional adaptation, ongoing support for translating documents, legal advice, avoiding re-victimisation; all these varying means of assisting and supporting victims of terrorism are held by them as essential needs to accessing compensation. Experiences of attacks across the world have shown that victims of terrorism face a complex environment with many different actors involved. One of the best practices to have evolved to help victims cope is a victims' advocate or navigator. This is a support person assigned to each victim who provides extensive support especially in co-ordinating with the many entities that contact the victim. This greatly simplifies and reduces what the victim has to deal with.

Interestingly, there was an equally strong call from victims to both create and remove a **FIXED SCALE TARIFF** establishing compensation amounts. Where some victims argued that pre-defined amounts guarantee fairness, equality between victims and transparency in decision-making, others argued that they fail to take into consideration individual factors and needs, thus making it less fair.

One victim suggested '[...] a clear scale of compensation (avoiding victims having to prove their suffering, which leads them to compete with other victims), and which allows them to also avoid consulting a lawyer (which represents additional costs). The coldness of the current system (having to actively seek your rights, and be defended by an inhumane lawyer) greatly aggravates the psychological state of victims. This seems essential.'

In a similar manner, another victim expressed, 'there should be a standard list of compensation throughout all the European states that give equal amounts for each level of loss.'¹²⁶ Additionally, victims who have experienced a system using tariff-based decisions on compensation amounts, urge these to extend to parents and children of deceased victims.

On the other hand, victims also advocate for the removal of a pre-defined tariff-based system, arguing that compensation must 'individually evaluate the consequences which impact daily life', with one

124 'Médaille nationale de reconnaissance aux victimes du terrorisme'

125 'Real Orden de Reconocimiento Civil a las Víctimas del Terrorismo'

126 Both quotes taken from victims' responses to the questionnaire for Victims of Terrorism.

victim offering this written testimony: 'It's simple; an exceptional and tragic event = exceptional measures = exceptional compensation. NOT a reference table in this type of situation.'¹²⁷

Lastly, victims expressed the need for clear **INFORMATION** and **LEGAL ADVICE** in accessing compensation. Direct feedback from victims, signals a need for information to arrive quicker, and to be delivered from competent and official sources. Access to legal advice helps avoid difficulties with insurance companies and improves their understanding of rights as victims in general, and specifically their right to claim and obtain compensation.

In addition to these needs, and recognising the large numbers of foreign victims affected by attacks, there are specific aspects to information provision, access to justice and long-term support that **cross border victims** experience. Moreover, **persons with previous mental health problems, women, children** as well as **members of certain ethnic, religious and/or cultural groups** may experience terrorist victimisation differently; such differences need to be addressed.

127 All quotes translated from their original French

ANNEX III

Problems faced by victims

The 2004 Compensation Directive requires that all Member States provide access to national schemes of compensation for victims of international violent crimes. All Member States have currently in place such national schemes of state compensation.

In practice, however, crime victims often do not receive financial compensation under state compensation or offender arrangements. In most Member States compensation is subsidiary to the offender's compensation and is normally paid in lieu of the offender's compensation through an administrative procedure and/or judicial proceedings.

Shortcomings in state compensation and offenders compensation prevent victims from obtaining compensation at national level and in cross border situations:

- Victims encounter problems to obtain state compensation at national level because they may: be de facto excluded from them; encounter major difficulties in accessing them;¹²⁸ or, perceive or suffer from unequal treatment when seeking state compensation¹²⁹;
- Victims encounter problems in obtaining offender compensation at national level because they are unable to receive compensation from the offender¹³⁰ or they encounter procedural obstacles in civil or criminal proceedings that make it difficult for them to get compensation from the offender¹³¹;
- In cross border situations, victims may not access state compensation because they may not be sufficiently informed of the possibilities to apply to state compensation in a Member State other than their own, or because cooperation between competent authorities in cross border cases is suboptimal¹³²; and,
- In cross border situations, crime victims are unable to receive compensation from the offender¹³³ and may not be able to enforce compensation decisions in another Member State¹³⁴.

Some of these problems stem from how societies express their solidarity towards victims. Cultural differences and legal traditions place varying emphases on the role of the State and the victim in securing compensation, and in particular securing compensation from offenders.

¹²⁸ This is due to a lack of information available to crime victims, lack of assistance, stringent eligibility criteria, and dilatory and complex processes etc.

¹²⁹ This is due to the late receipt of financial compensation, and varying compensation amounts with regard to the type of victims compensated which do not match victim's needs, etc.

¹³⁰ For instance, offender compensation arrangements in many countries require the offender to be identified, offenders do not have financial means to compensate the victim and in the absence of financial means from the offender, there are often no alternative forms of compensation.

¹³¹ Civil proceedings are a costly procedure. Unless the civil case is adhered to the criminal proceeding the victim has to cover the full cost of the proceedings, the offender often cannot be successfully prosecuted, and enforcement of the compensation decision may be difficult.

¹³² Victims or authorities assisting them may be deterred by language and translation requirements and cost implications in many cross border cases and varying standards of State compensation may block the access to such a scheme for non-nationals.

¹³³ Victims lack the necessary assistance in order to apply for compensation from the offender in cross border situations, victims are deterred from claiming compensation through criminal or civil court cases in cross border cases and victims may not benefit from legal aid in cross border situations

¹³⁴ Victims are insufficiently supported by EU legal instruments for enforcing civil judgements in cross border situations and victims are insufficiently supported by EU legal instruments for enforcing criminal judgements in cross border situations

As a result a significant proportion of crime victims eligible to compensation do not receive compensation in lieu of the damages and harm suffered.

Furthermore, victim's access to compensation is not facilitated by insufficient access to tailored professional and multidisciplinary support services. The problems faced by victims when claiming offender's compensation and state compensation may differ. Particular problems are highlighted here below.

A. General Problems

This section examines problems that victims face in accessing and authorities in delivering compensation. It has been prepared on the basis of the research made by victim support organizations and the report on state of compensation by the ENVR.

Article 4 of the Victims' Rights Directive provides victims with a right to receive information from the first contact with a competent authority. Victims should receive different kind of information about their rights, including how and what condition they can access compensation. The extent or detail of information should vary depending on the specific needs and personal circumstances of the victim. Moreover, Article 3 of the Victims' Rights Directive states that victims have a right to understand and to be understood.

Research of victims support organisation and the ENVR indicate however that victims are not sufficiently informed of their rights to claim compensation, on how to proceed through a complex judicial or administrative system. Moreover victims are not able to access information because it is either difficult to understand or is not provided in a language the person knows.

1. Lack of/Access to information and to guidance

Article 4 of the Victims' Rights Directive provides victims with a right to receive information from the first contact with a competent authority. Victims should receive different kind of information about their rights, including how and what condition they can access compensation. The extent or detail of information should vary depending on the specific needs and personal circumstances of the victim. Moreover, Article 3 of the Victims' Rights Directive states that victims have a right to understand and to be understood.

Crime victims in the EU do not always benefit from the timely provision of information with regard to existing rights to compensation, compensation arrangements and procedures. Ensuring that victims have access to compensation in Member States starts with providing them at the earliest stage with information about their rights to compensation and assistance as well as the process for claiming and obtaining compensation. Research of victims support organisation indicate however that victims are not sufficiently informed of their rights to claim compensation, on how to proceed through a complex judicial or administrative system. Moreover victims are not able to access information because it is either difficult to understand or is not provided in a language the person knows.

The reasons for the information deficit from which crime victims suffer are:

- the lack of information and clear guidance;
- the failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them.

a) The lack of information and clear guidance

There is a general lack of awareness about victims' right to financial compensation, the existence of financial compensation schemes and procedures and time limits for applying to compensation. This lack of awareness was highlighted by stakeholders consulted in several Member States Existing information is often provided in a language which is not understandable to victims. Stakeholders consulted attribute this situation to the lack of a victim perspective in the judicial system and because professionals are not well trained in the understanding of the victims' needs, victims' procedural rights and of the nature of the compensation arrangements.

For instance, in some Member States, there is no public information campaign or the information about victims' entitlement to compensation, procedures and assistance is not always made available or accessible. In other Member States, there is a lack of information about victim support services or the compensation scheme does not advertise itself, does not have its own website, does not have information leaflets. In another country, information is provided in only one form (i.e. either in written or in oral form) whereas it would be beneficial were it given in different forms and using different techniques¹³⁵.

The result of the data collection by ENVR shows that Member States apply various forms of providing information on compensation. The most common way is when victims are informed by the police (orally and by leaflets), or they are informed online. Additional forms of providing information are: through prosecutors, courts, NGOs, other professionals (who can be in contact with the victim e.g. hospital staff, women shelters) and embassies.

On the basis of the data collected by the ENVR, in 14 Member States¹³⁶ there is a hotline which can give information on compensation. However not all of these Member States dedicate their hotline specifically to compensation. The ENVR study however underlines – as a good practice-that the online application form is now available in 17 Member States¹³⁷. Another positive trend is the availability of online information about compensation in English. Such information is currently available in 14 Member States¹³⁸

¹³⁵ The web-based Court Introduction in Sweden is one way to inform victims about the criminal justice procedure and which could be further developed with respect to State compensation.

¹³⁶ According to ENVR data collection hotline available in AT, BE, CRO, DE, FR, HU, IE, LUX, LV, MT, NL, PT, SE, UK

¹³⁷ AT, BE, BG, CY, CZ, DE, EL, ES, FI, FR, HR, HU, IE, NL, PT, SE, SK

¹³⁸ BE, BG, CY, CZ, DE, ES, FI, FR, CRO, IE, LU, PT, SE, SI

b) The failure of the actors involved in the judicial system to inform the victims or verify that the information has been provided to them

According to the research of victim support organizations, a number of stakeholders identified the failure of the actors involved in the judicial system to inform victims as an obstacle to victims receiving sufficient information. **In accordance with the Victims’ Rights Directive**, national authorities (notably the police) and others having initial contact with victims are under a duty to provide adequate information and guidance about compensation. These authorities are often inconsistent in meeting their obligations. Consulted stakeholders (mainly victim support organizations) in many Member States raised this issue; instead of being given timely and helpful guidance victims have to find the information themselves. In addition, in a few Member States, there is no legal obligation on authorities involved in the criminal proceedings to verify whether victims are aware of their rights to claim or apply for compensation. One reason for this situation is the lack of appropriate training of the front-line staff. Better training of all persons coming into contact with victims would result in improved institutional capacity and address the problem.

Lack of access to information				
Issue	State compensation	Offender Compensation	Cross-border victims	Specific categories
1.1 Absence of information	a) Information for victims does not exist No website, flyer, etc. with information		Even though information might be available in one language, is not available in languages that are understandable	
1.2 Lack of assistance in accessing information	Competent authorities don’t inform Referral to information sources does not happen		CBV need more information on broader system to understand information (need more information) the majority of victims are unaware of the possibility to apply for state compensation after being victimised abroad.	
1.3 Quality of information	Information is not victim-friendly Information is not simple and accessible but too technical Authorities give wrong/contradictory information Information on website, e-justice portal, brochure is not correct/up to date			

A victim cannot access their rights if they do not know about them. The research by victim support organisations suggests that some Member States, are not legally required to provide information about the available state compensation.¹³⁹

c) Information on compensation for victims is not available

Under the Victims Rights' Directive information should be provided in different formats – corroborating with scientific studies, victims' testimonies and practical expertise highlighting that information for victims needs to be offered in different forms and a number of locations to actually reach victims¹⁴⁰. In some Member States, Information on state compensation is not available at all. In many other Member States information for victims is only available in one format or very limited number of locations.

Some Member States do not have a website dedicated to providing victims with information on compensation. In other countries, the website is dedicated to victims of terrorism¹⁴¹.

Interviews with state authorities and victim support organisations confirm earlier findings suggesting that some authorities deliberately limit their efforts of information provision to victims to avoid an increase in applications and hereto related budgetary increase.

“To be honest the reason we haven’t done any awareness raising campaigns for foreign victims up till now is in part budgetary. If more victims of crime know about the possibility to claim compensation when they were victimized in our country it would have direct implications on our budget.”

Compensation authority, CBC report VSE

When it comes the cross-border compensation, the information is often not available in other languages than the official language of the country.

d) Lack of assistance in accessing information

As Fredrik Mellqvist (Victim Support Sweden) explains:

‘I don’t know how many are not aware, but of course there are a lot of people who don’t get the information. We always see that people don’t get information about us or compensation. The people that go through the system may not be insured or get money from the offender, and not know about state compensation.’

¹³⁹ An interview with a Victim Support Sweden employee suggests that some victims do not know about their right to compensation when they access their services.

¹⁴⁰ Guidelines VR directive (VSE, Commission)

¹⁴¹ Website of the Office of Victims of Terrorism – Direction General to Support Victims of terrorism at the Ministry of Home Affairs: www.interior.gob.es

According to the research by victims support organisations victims are often not informed about the support they can receive from victim support organisations. Such support is crucial for victims.

I would not have managed alone — for sure, because the letters from the authority were intimidating. You have got the feeling not to be taken seriously. The application itself was already difficult; I couldn't have filled in the form alone and it was a burden. Without the support of WEISSER RING and my lawyer, I would already have given up, because the written notes from the authority were not friendly at all.'

When it comes to offender's compensation – Judicial authorities should provide information during criminal proceedings and in particular at the early stages of the proceeding to ensure that victims do not miss their deadlines to apply for compensation from the offender. Too often victims are not informed about the possibility of claiming such compensation (often within limited deadlines) by the relevant judicial authorities.

When it comes to problems related to cross –border aspects, victims' access to information about compensation is even more difficult. Therefore governments and competent authorities should put in extra efforts to overcome hurdles that characterise cross-border victimisation.

As Fredrik Mellqvist (Victim Support Sweden) explains :

'I don't know how many are not aware, but of course there are a lot of people who don't get the information. We always see that people don't get information about us or compensation. The people that go through the system may not be insured or get money from the offender, and not know about state compensation.'

e) Lack of quality of information

As indicated by the research of victims support organisations, too often **information is not simple and accessible** and very difficult to understand for a victim who has no background knowledge in criminal proceedings, rights or legislation. Simone Wilkes and Wiebke Fey of the Federal Ministry of Labour and Social Affairs, Germany explain that despite the existence of information, its language is legally technical to the extent that it becomes difficult for most victims to understand.

f) Information is not provided in accordance with victims' individual needs

What became apparent from interviews with victims and compensation authorities is the mismatch between what is perceived as 'a simple and accessible language' and the reality.

Whilst compensation authorities were convinced that information sent and made available was 'simple and accessible', victims testified that the information was very difficult to understand and too complex to shed light on what they – in their own individual situation – should do.

Victimisation often leads to traumatic stress symptoms. These symptoms are a normal reaction to an abnormal situation. The post traumatic stress reactions that victims can portray are described in the

psychiatric manual. [reference]. Some of these symptoms directly influence the way information can be understood, processed and responded to.

Victims of crime often have difficulty concentrating, have feelings of hyper-arousal, are not able to remember key features of the event, have difficulty sleeping, reduced functioning of memory of what happens after the event, have decreased interest. All of these reactions to the stressful event of crime influence how victims are able to deal with information they receive on compensation.

Fredrik Mellqvist, Acting General Secretary promotes the importance of providing victims with information repeatedly, at multiple stages:

We have the problem that the law is really complicated, they receive information that is too difficult to understand. Too much information, information that is not transparent at all. These are problems that we already have. [...] Even for us, it is hard to understand. Especially for victims and small organisations. They may understand some things about compensation but not about State compensation. (Victim Support Organisation)

Currently, information for victims in some Member States seems to be drafted to be simple and accessible for the professional, not taking into account the perspective of a victim that is often traumatised and has particular needs. Victim-oriented and trauma-sensitive information provision implies verification of whether or not the information was received, processed and made sense to the particular victim.

Another issue is the fact that information is sometimes **inaccurate or contradictory**. Contact details, eligibility criteria and forms are not always up to date and available.

Next to the inaccuracies of information through written sources, victims are also faced with inaccurate information by the competent authorities. They are informed but the information is not always up to date, not detailed enough, or in-congruent.

'The police are supposed to inform victims when they report the crime, but as always some information gets lost or is badly received. I believe the police tell them. They also get information sent to them. The court also gives information on how to deal with compensation. There is information provided through the court authority: there is information on their website. In Victim Support Sweden, we also give a lot of information and help victims apply for compensation. Also, the Compensation Authorities are really helpful in these cases.'

'Excerpt interview compensation expert Croatia – even those people who need to provide information don't understand how it works, they don't even understand the difference between offender and state compensation, If they don't understand – how can victims?'

Even state compensation authorities describe how the information they find on the national website or the European platform is not always up to date, making it hard for them to inform cross-border victims in a good way.

The E- justice portal by the European Commission offers an important opportunity to inform cross-border victims or victims who don't speak the national language with simple and accessible information. Interviews and previous studies however point to some of its shortcomings in providing accurate and complete information. The information also could be provided in a more user-friendly manner.

g) Lack of guidance and training

In general, Member States don't invest enough in professional guidance and training initiatives for the judicial authorities and police, about the victims' rights and needs, the way to behave, to communicate, to support, to inform. Criminal judges remain to be convinced that victim compensation is an important part of doing criminal justice. The appropriate information is not always given by the police. Embassies, consulate are not enough prepared in case of terror attack with a large number of nationals victims. Support services need also to be update with special and professional psychological or specialised guidance.

Victims also complain that there is a lack of understand of the national scheme of compensation among those are obliged to provide it.

'Even those people who need to provide information don't understand how it works. Sometimes a police officer or even lawyer does not even understand the difference between offender and state compensation. If they – who are supposed to explain this to victims- don't understand, how can victims?' (interview victim compensation expert)

h) Unfair and low amount of compensation

As demonstrated by the research of victim support associations, crime victims in the EU question the fairness and appropriateness of the state compensation awards in their Member States and the difficulties in being compensated by the offender.

2. State compensation

The problems met by the victims are the followings:

a) Low amounts of compensation

The survey by victim support organisations demonstrates that delays, lack of emergency payments, and law amounts of compensation present a major problem for victims. In particular, the majority of respondents to the surveys by victims support associations perceive victims' compensation as not

sufficient. The amount of received compensation and the way they are calculated do not necessarily correspond to the extent of the harm suffered or material damage incurred by the victim.

Given this perception and the differences among Member States in the criteria used to award compensation, there may be merit in promoting the use of common criteria, including an assessment of the harm suffered (for the calculation of state compensation) as well as establishing common requirements for major types of damages leading.

In many Member States the levels of compensation are perceived as not matching the victims' needs. The levels of State compensation are not regarded as adequate in several countries. They are specially deemed insufficient for victims who suffered severe injuries with long-lasting consequences

A preliminary survey which was sent to VSE members in early 2018 revealed that delays, emergency payments, and the amounts of compensation paid to the victims presented a major problem. These results will be expanded upon once results from our current questionnaire are collated.

The majority of respondents to the surveys by victims support associations perceive the victims' compensation as not sufficient. When it comes to the financial losses, 56.3% of respondents stated that the compensation was usually not sufficient. According to 37.5% of respondents it was sometimes sufficient. With regard to psychological harm, 31.3% respondents said that victims never receive sufficient compensation, and 31.3% found that the compensation is usually not sufficient.

The ENVR study also shows that there is a great diversity in the amount paid by different EU Member States. It varies from a couple of thousands of Euros paid to dozens of millions euros in other Member States. Even if taking into account obvious differences between the EU Member States such as the population and the GDP the differences in the amount of the awarded compensation are very important.

In the majority of the Member States, the state compensation is perceived by victims as law and not covering loss of income. In several Member States, the compensation is related to the minimum wage. Also, the upper limits of compensation do not take into account the rising costs of living or inflation.

In most Member States, the compensation is in general considered as a financial assistance via the payment of lump sum and not as a real or full reparation covering all or most damages (physical, psychological, material and economical)

According to the ENVR research, most state compensation schemes are financed from the state budget. Ireland noticed that there is an annual limit on the amount of compensation that can be paid. Nevertheless, most Member States have a ceiling of the amount that can be paid in a single case with the exception of Austria, Ireland, Germany, and, in case of major crimes or serious injury, France. The ENVR study also shows that there is a great diversity in the amount paid by different EU Member States. It varies from a couple of thousands of Euros paid to dozens of millions euros in other Member States. Even if taking into account obvious differences between the EU Member States such as the population and the GDP the differences in the amount of the awarded compensation are very important. Regarding the amount of payment, in most Member States it is determined on a case by case basis. Compensation can be paid in all the involved Member States in a single payment (lump sum), moreover it is available in monthly instalments in 8 of the researched states.

In Belgium, the compensation scheme is financed by a Fund, which is supplied from fees paid by offenders. In France, as an alternative scheme to the state budget, contribution by insurance contracts exists. The amount paid out by Member States for state compensation varies significantly.

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b) Restrictive eligibility criteria for state compensation:

Eligibility criteria for accessing state compensation are often restrictive and complex. They also vary greatly from one Member State to another, which makes the access to national schemes of compensation particularly difficult for cross-border victims.

The 2004 Compensation Directive sets out the right to access national compensation schemes for victims of intentional violent acts. It does not however provide for any eligibility criteria, it does not define victims, nor violent intentional crimes. All these are left to the national legal order of each EU Member State. It should be also stressed that, according to the Directive, victims do not have a right to compensation, but merely a right to access national compensation schemes. This formulation stresses that the modality of access to national compensation schemes are left to the national rules. In consequence, victims of the same crime, will receive very different compensation in different EU Member States.

Eligibility criteria for State Compensation define *what* and *who* is compensated. Member States again diverge in their approach in what can be included in a compensation claim. Where medical costs are largely compensated across the board, Member States vary in accepting compensation claims for other forms of damage such as funeral costs, moral or material damage, loss of income for example.

According to the ENVR Comparative Data Collection on Compensation Schemes; the types of damages for which state compensation is paid in Member States. Most Member States compensate medical costs and loss of earning during the medical treatment. Some Member States also compensate psychological damage, that often covers long term individual needs such as long-term psychotherapy or, adaptation of housing. Most of Member States cover funeral costs. As regards stolen or damaged property, 7 Member States pays state compensation. Additionally, Finland and France compensate stolen or damaged property under certain conditions. Variations occur in the coverage of victim population and type of crimes or damages eligible for compensation. In some Member States third country nationals may be excluded from the scope of victim compensation schemes. Other criteria preventing the victims from obtaining compensation in cross-border cases are the differences in limitations periods and in evidential requirements.

There are also some disparities between the Member States in terms of the types of crime, injuries and harms which are covered by their respective compensation arrangements. Most violent crimes such as homicide, sexual offences and assaults are today covered in all Member States. But variations in the coverage of violent crime compensated are viewed as 'unfair' by victims. In particular, when it comes to

¹⁴² AT, DE, ES, FI, FR, HU, PT, SE

consideration of what constitutes a violent act – there are still great differences among the EU Member States.

Also extremely restrictive eligibility criteria often result in serious limitation to effective access to compensation. For example, in 11 Member States victims of crime with a criminal history may not be eligible for compensation, (depending on the type and time of the committed crime)^{143 144}. Other criteria preventing the victims from obtaining compensation in cross-border cases are the differences in limitations periods and in evidential requirements.

Our law is filled with restrictions for victims to be eligible for compensation. It seems to be the intention of the lawmaker is to give less and less money. In that way restricting the rights of victims.

- Interview victim support expert

c) Lack of Emergency payments or upfront payments

Only few member states grant to the victims emergency payments in few days or weeks after the violent act to help the victim to face the first costs (funerals, loved ones travels, child care..). We have the same situation regarding upfront payment during the judicial proceeding in order to partly compensate the victims before the judicial decision concerning the perpetrator. Only few member states organize a system of subrogation. With this system, the state pays the compensation in advance and later recover it from the offender. It is a really interesting way for the state compensation scheme to relate to the offender compensation system.

d) Lack of extended notion of reparation in kind

In the area of compensation, the practice of arranging in parallel with the financial compensation, for reparations in kind for example free support for professional reintegration, mobility, trauma, or childcare or providing for special practical support is not included in the definition of state compensation. There are neither no automatic obligation to coordinate the decision of state compensation authorities concerning the financial compensation with other decisions of other state administrations regarding the offer of free support services to the victims.

e) Limited compensation resources of some Member State

Scarce resources of some Member State dedicated to compensation limit the amount of compensation and the number of victims who can be compensated. In some countries it results in situations where, a victim who has been awarded the compensation at the beginning of the funding period will receive it, but another victim who has been awarded t the end of the funding period – will not. The absence of minimum standards at national level can also be a source of variations in the compensation awarded.

¹⁴³ European Committee on Crime Problems (CDPC), summary of replies to the questionnaire on the European Convention on the Compensation of Victims of Violent Crimes, ETS No 116, CDPC (2018) 20, Strasbourg, 14 September 2017

¹⁴⁴ European Commission > EJN > Compensation to crime victims (factsheets by country)

According to the ENVR Comparative Data Collection on Compensation Schemes; the types of damages for which state compensation is paid in Member States.¹⁴⁵ The results show that there are differences among the Member States when it comes to the types of damages that are compensated. Most Member States compensate medical costs and loss of earning during the medical treatment. Some Member States also compensate psychological damage¹⁴⁶, that often covers¹⁴⁷, long term individual needs such as long-term psychotherapy or, adaptation of housing. Most of Member States cover funeral costs.¹⁴⁸

According to the ENVR research, most state compensation schemes are financed from the state budget. Ireland noticed that there is annual limit on the amount of compensation that can be paid. Nevertheless, most Member States have a ceiling of the amount that can be paid in a single case with the exception of Austria, Ireland, Germany, and, in case of major crimes or serious injury, France.

In Belgium, the compensation scheme is financed by a Fund, which is supplied from fees paid by offenders. In France, as an alternative scheme to the state budget, contribution by insurance contracts exists. The amount paid out by Member States for state compensation varies significantly.

As regards stolen or damaged property, 7 Member States pays state compensation.¹⁴⁹ Additionally, Finland and France compensate stolen or damaged property under certain conditions.

3. Offender compensation

The most important problems are the Insolvency of the perpetrator and the difficulty in having the judgement executed.

It is essential that the perpetrator of the act of violence is prosecuted and convicted as well as compensates his victim. Nonetheless, very often the punitive element of compensation is not guaranteed since the offender does not have the means to compensate the victim or the execution of the judgement imposing the compensation is too difficult for the victim.

It means that even after a very long and challenging process leading to the judgement imposing the obligation on the perpetrator to compensate, the victim is often not compensated (or fully compensated).

This is mostly due to :

- the lack of financial means of the offender;
- difficulties in the enforcement of compensation decisions.

Moreover, for vulnerable victims and for those with limited means it may be especially difficult to obtain compensation from the offender. And those with limited means may have been impacted financially by the crime to a greater extent than those with more means (and perhaps insurance). In such circumstances systems of state upfront payments where the state pays the compensation first and later recuperates it from the offender may reduce the problem. Another factor may be the lack of incentives for offenders to pay compensation because of the absence of links with effects on the sentence they receive. Also, even if mechanisms do not exist or are poorly enforced, offenders may also not contribute towards the costs of victim support or general costs of SC regimes.

¹⁴⁵ Data collection by ENVR on Member State compensation schemes

¹⁴⁶ Except BG, CRO, IE

¹⁴⁷ BG, SI, SK

¹⁴⁸ Except CZ, PT, SI, SK

¹⁴⁹ BE, HU, IT, LUX, MT, PL, SE

a) Offenders do not have financial means to compensate the victim

Offenders, especially those convicted for violent crimes, often come from low social-economic backgrounds. This means that they are potentially unemployed and on low incomes or do not possess capital nor property with which they could pay the compensation. Offenders' inability to pay was evidenced in several Member States. Similarly, according to the calculations based on Eurostat¹⁵⁰ data, only about 8.5% of the guilty offenders of a violent crime end up being fined. This might be because of their financial situation and the alternative sanctions such as imprisonment are being imposed instead.

Some Member States address this issue by providing upfront payments of compensation awarded to victims who are vulnerable or do not disposing of sufficient means after the conviction. The state pays the victim first and later recovers the sums from offenders. This is however, not the case in a majority of Member States

b) Difficulties in the enforcement of compensation decision

Victims are often not able to enforce compensation, even when compensation decisions are pronounced in their favour. This is partly due to the absence of or a lack of obligations on Member States to assist victims in enforcing compensation from offenders and receiving payments. In only a few Member States authorities enforce the compensation decisions on behalf of the victim at no cost for the victims. In some countries such upfront payments are however conditioned¹⁵¹.

When there are no services dealing with enforcement and follow-up of the compensation decision, victims willing to enforce the compensation will have to pay for bailiff services, which can be costly given that a majority of Member States do not provide for free enforcement to the victims, but only offer assistance or support or apply conditions for free enforcement. In addition, enforcing compensation decisions may entail taking legal action against the offenders involving a court ruling thus putting extra financial burden on the victim.

c) Lack of systems of compensation to the victims as sanctions on basis of criminal law

The option to put criminal sanctions as a pressure on the offender to make payments to the victim (compensation in lieu of (further) punishment) is rarely used by the criminal courts in the Member states (It is the case in Germany). Amount of payments that go beyond their basis in substantive civil law and hence have their foundations in substantive criminal law can offer better compensation amounts to the victims

¹⁵⁰ Sources: European Sourcebook of Crime and Criminal Justice Statistics – 2010, Eurostat

¹⁵¹ For instance In France, the victims are entitled to receive part of the compensation awarded for minor crimes.

4. Procedural obstacles: Lengthy, complex and costly procedures that lead to victims being discouraged from claiming compensation

Crime victims in the EU encounter procedural difficulties in applying for compensation. The process for obtaining compensation is slow, administratively burdensome and in many Member States conditional to the launch or completion of judicial proceedings. The restrictive timelines to lodge an application (or seek compensation) and resulting long time to obtain compensation; perceptions that the level of financial compensation awarded is inappropriate and unfair; and complex application procedures deter victims from exercising their rights and seeking compensation. In addition, in many Member States, there is no right to have a decision on compensation (either state compensation or offender's compensation) reviewed. Particular procedural obstacles may not only have the effect of discouraging potential claimants but also leading to situations where clear principles and procedures are not applied. Alternatives to seeking compensation through judicial proceedings like the use of mediation and restorative justice to enhance victim's re-adaptation to society are not available in some Member States. The procedures for claiming or applying for compensation are varied, complex and can be costly. The different problems are the following:

a) Interdependence between state compensation and offender compensation

The interdependence of state compensation with offender compensation is complex and challenging. The principle of subsidiarity forms part of 22 out of 24 Member State compensation schemes.¹⁵² In such instances, a positive obligation is placed on the victim to seek compensation from an offender and other sources prior to applying and/or obtaining state compensation. One must be mindful, that victims must apply for compensation from the offender at a time when they are trying to navigate the criminal justice process - a process which in and of itself can cause secondary victimisation. Administrative hurdles can act as an obstacle to receiving offender and/or '*fair and adequate*' state compensation.¹⁵³

When it comes to the interplay of state compensation with offender's compensation, the ENVR data shows that most of the 25 Member States for which this data is available¹⁵⁴, requires that crime must be at least reported in order to claim state compensation. The end of a police investigation was reported as a prerequisite of state compensation in 9 Member States out of 12 Member States for which the data has been collected, BE and NG reported that the prosecution of the reported criminal offence is also a prerequisite of state compensation. In SK it is not a prerequisite if the offender is unknown.¹⁵⁵

ENVR research scrutinized the issue of advance payment of **state compensation to the victim**. The advance payment is available in several countries¹⁵⁶. Moreover, in some Member States¹⁵⁷ compensation or

152 VSE Survey

153 Article 12 (2) Compensation Directive

154 Exceptions are FR, IE, LU, NL

155 Thomson Reuters Foundation: Comparative Report: That report outlines the countries which consider any culpability on the behalf of the victim and any actions which may have continued to the event. An interviewee indicated that an Irish victim was told that the State compensation scheme could not consider their application until the final outcome of the trial.

156 AT, BE, ES, IT, FR, LT, LU, MT, PL, PT, UK in DE, FI, NL under specific conditions (see Data Chart Table 3B)

157 AT, BE, FR, HU, UK, in FI, LU, NL under specific conditions

emergency compensation can be received directly after the crime, though it can be restricted to some kind of costs. In countries where the payment in advance / directly after the offence is ensured, the authorities need to face the issue of risks of double payment -how the victim should report if the damage is compensated later from another source(s).

One cannot consider criminal compensation and offender compensation in a vacuum. Consideration must be given to the impact that the whole process of seeking compensation has on a victim. The compensation process, may, in some jurisdictions, cause further secondary victimization, contrary to a victim's right under the Victims' Directive.¹⁵⁸

If a compensation order is made during the course of criminal proceedings, a victim is relying on the offender to pay that compensation. If an offender refuses to pay then the victim may have to proceed to enforce the judgment against him or her.¹⁵⁹ Without the appropriate support it can be difficult and costly for a victim to receive offender compensation. This process can result in secondary victimisation as the victim may feel that the offender still has some form of control over him/her.

There appears to be different criteria within Member States as to when and how a victim can seek state compensation. Often victims must consider how they can access state compensation at a time where they have already tried but failed to obtain offender compensation. At this stage a victim may already be exhausted by the criminal justice process and decide not to 'bother' to apply for State compensation due to its onerous nature.

Requiring a victim to seek compensation from their abuser or an offender, prior to seeking state compensation, does not consider a victim's individual needs or their voice. Some victims need compensation, but they do not want to accept money from an offender or they have no money to be able to pay the costs of the procedure and of the lawyers. In order to seek offender compensation a victim may have to submit legal forms or make an application to the court depending on the jurisdiction involved.

The victims' situation can be also complicated if no one is found guilty or the case is thrown out on a legal technicality. There is provision in some jurisdictions for state compensation to be awarded where the offender is not identified or has not been apprehended.¹⁶⁰

Permitting a victim to apply for compensation even where the offender is not identified is in keeping with the definition of a victim as outlined in the preamble of the Victims Directive.¹⁶¹ Even where a guilty

158 Article 18 Victims Directive

159 See best practices section Kawesa, 'Victim Support Services in the EU: An overview and assessment of victims' rights in practice' Sweden, 2014 available at Governments Helps Victims of Crime Collect Restitution (November 2009) <https://www.saskatchewan.ca/government/news-and-media/2009/november/26/government-helps-victims-of-crime-collect-restitution> Best Practices for Restitution: Adult Restitution Program (ARP) and Restitution Civil Enforcement Program (RCEP) in Saskatchewan

<https://www.victimswEEK.gc.ca/symp-colloque/past-passe/2015/presentation/hala.html>

160 Sweden, Other member states have indicated that this is the case but the information is contradictory and needs to be clarified.

161 Victims Directive Preamble 19 "[a] person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them'

verdict is present a victim may still find it hard to access offender and state compensation.¹⁶² In some jurisdictions, State compensation can be refused where the victim did not fully co-operate with the investigation or their actions contributed to their injuries.¹⁶³

Delays significantly impact on a victims ability to receive both offender and state compensation.¹⁶⁴ Both offender and state compensation should be made available within a reasonable time. Article 6 of the ECHR provides that justice should be afforded within a reasonable time.¹⁶⁵ Similarly, Article 41 of the EU Charter provides that *'[e]very person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union'*. Victims can face significant delays in receiving offender and state compensation. The duration of a criminal trial will impact on when a victim might get an order for offender compensation and subsequently receive compensation. Fair procedures require that an offender has the right not only to appeal a conviction but also any order for compensation, which can add to the delay.¹⁶⁶

It is a pre-requisite in some Member States that there is a guilty verdict to apply for state compensation.¹⁶⁷ Even in Member States which do not require a guilty verdict, a finding of not guilty, may dictate whether or not a victim is entitled out obtain state compensation.¹⁶⁸ In both instances victims will have to await the outcome of a criminal trial to obtain both offender and/or state compensation. Delays by a state compensation authority to provide a decision on compensation can amount to a breach of fair procedures as a victim has a right to a *'reasonably prompt decision'*.¹⁶⁹ Also delays in the victim receiving the money when an award is made may also be contrary to fair procedures.¹⁷⁰

Member States have different mechanisms of enforcing a victims surcharge/victims funds and the collection of those monies.¹⁷¹ Member State who already collect funds/fines/surcharges may have the capabilities of collecting the offender compensation which is due and owing to the victim.

This is in keeping with Member States obligations under Article 16 (2) which provides they *'shall promote measures to encourage offenders to provide adequate compensation to victims'*.¹⁷² Moreover the collection of offender compensation is in a Member States interest. Based on the principle of subsidiarity a victim may not be entitled to State Compensation if they are in receipt of offender compensation.

162 Aher -v- Criminal Injuries Compensation Tribunal [2009] IEHC 198

163 Thomson Reuters Foundation, Comparative Report. In most countries in this report this was a factor which could limit or refuse compensation.

164 Article 12 (2) Compensation Directive

165 Council of Europe, 'The length of civil and criminal proceedings in the case-law of the European Court of Human Rights' available at [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-16(2007).pdf)

166 VSE Survey indicated that appeals processes existed in all countries; EU Charter, ECHR, National Constitutions

167 European Network on Victim's Rights Report

168 Thomson Reuters Foundation: Comparative Report: That report outlines the countries which consider any culpability on the behalf of the victim and any actions which may have continued to the event. An interviewee indicated that an Irish victim was told that the State compensation scheme could not consider their application until the final outcome of the trial.

169 Byrne v Criminal Injuries Compensation Tribunal & Ors [2017] IEHC 28 para 30

170 Interview with lawyer. A judicial review proceeded and it was settled out of court, hence there is no citation.

171 FRA, 'Victims of crime funds' – contributions by convicted persons, available at <https://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/funds> According to the FRA Report 10 Member States have Victims Funds/Surcharges. See best practice section for more information.

172 FRA, 'Victims of crime funds' – contributions by convicted persons, available at <https://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/victims-support-services/funds>

If victims do not report a crime, they are not entitled to seek compensation. These are often the most vulnerable victims, such as children, undocumented migrants, homeless, trafficked victims to name a few. They are arguably the most in need of emergency compensation.

Moreover, the information on the interrelationship between offender and state compensation, which is available publicly is often confusing and contradictory. Very often there is separate information available in relation to what needs to be done in each process.

Findings with respect to the challenges of the interrelationship between offender and state compensation are as follows:

- Information on the interrelationship between offender and state compensation is not being made available to victims in simple and concise language
- Requiring a victim to seek offender compensation does not consider the individual needs of the victim.
- The processes in Member States vary significantly as to how a victim must seek offender compensation, often requiring a victim to engage positively with that process. Consideration should be given to requiring the Prosecution to always seek compensation on the victim's behalf. The Prosecution can ask the victim whether or not they want to receive that compensation.
- Lack of information during criminal proceedings about the deadlines to claim offender's compensation
- High risks of secondary victimisation due to prolonged exposure to the offender and delays
- Lack of effective and free of charge legal aid
- Difficulties in executing offender's compensation in Member States which do not facilitate it for victims
- Delays in providing compensation to victim due to requirements for seeking offender compensation can be highly damaging and burdensome for victims
- Overall requirement to exhaust the offender's compensation as a condition to request state compensation

b) The costs of procedures to obtain compensation are too high for victims

Victims must bear the costs of participation in the relevant proceedings. Although, there are ways for victims to reduce or avoid the cost of judicial proceedings, these are not always available in all Member States or applied sparingly.

Crime victims are often deterred by the financial costs involved in claiming compensation through criminal or civil court (Procedure fees; lawyers costs).

In some Member States administrative fees are charged for applications for state Compensation (e.g from 9 € to 100 €170). These fees are in addition to the additional expenses victims have to incur either because of the economic consequences of the crime or because of the cost related to the judicial

proceedings. Waiving of administrative fees linked to application for state compensation may help address this problem.

With regard to offender compensation arrangements, victims are entitled to legal aid to pursue offenders in court only in a few Member States. Legal aid can be also subject to a means test or restricted to particular items (i.e. it may exclude the cost of appeals, expertise costs, etc.). In addition, the coverage of the amount of legal aid granted may not cover the overall legal fees in several Member States. In general, victims are not entitled, as such, to legal aid within each jurisdiction. Legal aid is not made available in some countries. This raises concerns in relation to access to justice, in light of Member States obligations under Article 47 of the Charter of Fundamental Rights of the European Union (EU Charter).¹⁷³

In principle victims should be able to access free legal aid. If a victim cannot apply for compensation in criminal proceeding as they cannot afford legal aid then it is an access to justice issue. If they do not apply for offender compensation then they may not, based on the principle of subsidiary, be entitled to request state compensation.

According to the ENVR research, state supported legal aid for victims is available in several Member States¹⁷⁴ under specific conditions set up by law refer to receiving legal support¹⁷⁵.

It has to be mentioned that Victim Support Services or other associations/funds provide assistance to victims in compensation procedures e.g. in filling out the application form, legal assistance. According to the data reported by Member States, there is assistance for victims with particular needs in AT, DE and ES.

In some Member States the financial situation of the victim can affect the eligibility for compensation. E.g. in HU the income threshold is a general eligibility criterion, in HR in the case of compensation for loss of maintenance, in NL in case of additional compensation). Regarding the researched Member States, in EL there is a procedural fee in compensation cases.¹⁷⁶

c) Slow procedures and lack of respect by the compensation authorities of the compensation decision deadlines

Victims experience long delays in obtaining state compensation. The problem may be explained among length of judicial procedures that requires completeness of the procedure to claim offender's compensation. As a result, victims often receive their compensation several years after the crime was committed.¹⁷⁷

Also the state compensation is often granted after long delays. In some Member states, there are no concrete deadlines to be compensated, and when there are deadlines, they are not always be respected.

¹⁷³ Charter of Fundamental Rights of the European Union (2000/C 364/01) There is some evidence from research conducted which suggest that legal aid is not available freely. Further research needs to be conducted on this issue.

¹⁷⁴ AT, BG, DE, FI, FR, HU, LU, PT, SK

¹⁷⁵ Data collection by ENVR on Member State compensation schemes

¹⁷⁶ Data collection by ENVR on Member State compensation schemes

¹⁷⁷ In a majority of Member States, crime victims can only obtain State compensation after the court judgement and the failure to recover compensation awards from offender. Only in a third of the Member States can the victims obtain the State compensation otherwise

Only few cases are closed and compensated in a state compensation scheme within the first 12 months and 50% after 24 months.

The positive exception here is France, where almost 60% of cases are closed within a year. According to the survey by victim support organisation, 56.3% of respondents stated that delays in making decisions about compensation are often problematic for the victims.

According to the victim support organisations survey, victims often receive their compensation several years after the crime was committed. In some Member states, there are no concrete deadlines to be compensated, and when there are deadlines, they are not always respected. Only few cases are closed and compensated in a state compensation scheme within the first 12 months and 50% after 24 months. The positive exception here is France, where almost 60% of cases are closed within a year.

Country	Time limit for reporting crime
Czechia Republic	'without undue delay' ¹⁷⁸
Denmark	72 hours from the crime ¹⁷⁹
Germany	3 months – 30 years, depending on the crime ¹⁸⁰
Estonia	15 days ¹⁸¹
Ireland	'as soon as possible' ¹⁸²
Hungary	Within 6 months (after 3 years, compensation applications may not be submitted) ¹⁸³
Cyprus	5 days ¹⁸⁴
Malta	No later than 1 year ¹⁸⁵
Romania	60 days, unless minor then no time limit applied. ¹⁸⁶
UK	'without undue delay' ¹⁸⁷

d) Restrictive time limits to apply for compensation

¹⁷⁸ Analysis of the application of Directive 2004/EC/80 relating to compensation to crime victims, synthesis report, Matrix Insight, European Commission Director General Justice, Freedom and Security, 12th December 2008

¹⁷⁹ 'Your right to compensation (PDF)', <http://erstatningsnaevnet.dk/da/GlobalMenu/english.aspx> :

http://erstatningsnaevnet.dk/~media/EN/en_OEL_engelsk_2018_.ashx

¹⁸⁰ Info Victims, Country Profile: Germany: <http://www.infovictims.com> AT/DE/CZ/PL/PT/

¹⁸¹ State compensation to victims of crime in Estonia, Conference 'Compensation mechanisms for victims of crime in criminal proceedings in the European Union', Riga 22 May 2013, Liina HALLIK, Social Insurance Board of the Republic of Estonia

¹⁸² Analysis of the application of Directive 2004/EC/80 relating to compensation to crime victims, synthesis report, Matrix Insight, European Commission Director General Justice, Freedom and Security, 12th December 2008

¹⁸³ Brochure The victims' rights pursuant to the crime victims compensation act.pdf:

<https://pravosudje.gov.hr/UserDocsImages/dokumenti/lz%20pravosudnog%20sustava/podr%C5%A1ka%20C5%BErtvama%20i%20svjedocima/Brochure%20The%20victims'%20rights%20pursuant%20to%20the%20crime%20victims%20compensation%20act.pdf>

¹⁸⁴ European Commission > EJM > Compensation to crime victims (factsheets by country): Cyprus

¹⁸⁵ European Committee on Crime Problems (CDPC), summary of replies to the questionnaire on the European Convention on the Compensation of Victims of Violent Crimes, ETS No 116, CDPC (2018) 20, Strasbourg, 14 September 2017

¹⁸⁶ European Commission > EJM > Compensation to crime victims (factsheets by country): Romania

¹⁸⁷ Analysis of the application of Directive 2004/EC/80 relating to compensation to crime victims, synthesis report, Matrix Insight, European Commission Director General Justice, Freedom and Security, 12th December 2008

Limited periods and short deadlines for submitting applications constrain victims' access to compensation. Most Member States set restrictive deadlines for the victims to claim compensation. Moreover, the deadlines seem not to correlate with the nature of the crime. The deadlines vary greatly, from a minimum of three months in some Member States to a maximum of 30 years in others. Half of the Member States have minimum deadlines for lodging an application for state compensation of less than two years from when the crime took place. Some Member States have very short deadlines for application. In other Member. The different applicable deadlines depend on whether the perpetrator is known or unknown. In yet another category of Member States), the limitation period is calculated from the time the victim become aware of the damage. In general, the deadline for applications is not extendable save in exceptional circumstances.

There is a vast variety between Member States concerning the time limit applied to victims in reporting the crime and its relation to accessing compensation

The deadlines for claiming state compensation vary in the Member States. Some Member States count the starting point from the date of the crime (e.g. AT – 2 years from the crime retroactively, CY - 2 years from the date of death or the occurrence of the offence, HR - 6 months from offence, HU – 3 months from the offence. LU - within two years of the offence, NL - 10 years after the offence took place, PT - one year from the commission of the offence). In the countries where the deadline is relatively short to apply for compensation, the time limitation can be extended for different reasons (e.g. in case of incapacitation for applying, if the offender is prosecuted or if the victim was minor at the date of the offence).

In addition to the deadline in which compensation should be requested, Member States also identify a different event as the starting point of that delay.

Some Member States count the starting point the date of the final judgement (e. g. BE 3 years from final decision or closure of the case, FI - 3 years from judgement, 10 years from commission of offence if there is no judgement, SE - 3 years from judgement/close of investigation/ children may file claim till the age of 21, SK - 1 year from validity of judgement) or decision ending procedure and in other Member States there is no time limitation (e.g. DE – generally no time limitation, FR – no time limit in case of justifiable reason).¹⁸⁸

¹⁸⁸Data collection by ENVR on Member State compensation schemes

The below chart shows the average times to deliver a decision¹⁸⁹:

Average time to deliver a decision							
AT	Objective is a maximum of 6 months from date of application	BE	The average time to deliver a decision is 18 months for principal support. An average of 5-6 months is needed for Emergency support (this does not include claims of victims of terrorism)	HR	A ruling on the right to compensation shall be rendered by the Committee within 60 days from the date of receiving the complete application	FR	No deadline. Usually few months. Offer provided within 2 months from the reception of the complete file. Advance paid within one month for victims of terrorism.
BG	1 month. If it is necessary, this period may be extended up to three months.	DE	The average time for all cases is around 9 to 12 months.	CZ	3 months	LU	Mandatory to have a decision within 6 months of date of the application
EL	3 months from the date of the application	CY	6 months	EE		ES	2-6 months; 12 months in victims of terrorism cases
FI	7 months	DK		IE	2-3 years	IT	without delay
HU	Maximum 60 days	LT	1 months	LV	1 month	MT	1-2 months
NL	6 months	PL	There is no deadline.	RO		SK	6 months
PT	After the instruction, which should take place within 1 month, there is no deadline.	SE	Average processing time is 3 months	SI	3 months, the procedure lasts less than half a year	UK	Straightforward cases up to 12 months. Claims are not finalised until victim does not recover from injury.

Cross-border issues were also examined in terms of delays in/lack of payment. 56.3% of respondents stated that the assistance provided to the foreign victims within their national compensation schemes is mostly insufficient, while in another question, 62.5% of respondents also said that the compensation claims from foreign victims are awarded “sometimes”. As for the most common reasons for an unsuccessful compensation claim by a foreign victim, the respondents stated the following: “foreign victims do not know the system”, “compensation scheme is not fit for purpose”, and “late reporting to police”.

¹⁸⁹Data collection by ENVR on Member States compensation schemes

e) Refusal because of incompleteness of files

According to the survey by victims support organizations, over two thirds of compensation authorities cite incomplete files as one of the main reasons for not-granting compensation. Incompleteness of files is often related to aspects like missing of a signature, missing a date, missing document or a lack of translation.¹⁹⁰

According to the ENVR data collection, several Member States accept other languages during the compensation process. Some assisting authorities cover the costs of the translation of the compensation form. If interpretation is necessary FI, FR, HR, HU, IE, LU, PL and SE bear the costs of interpretation. Translation of supporting documents or evidence, is covered in at least 7 Member States. One third of participants refer to the strict elements in the national legislation that does not allow them to do anything but refuse the claim when it is not complete.

f) Complex administrative procedure in case of state compensation

Claiming compensation from the offender through judicial proceedings is in most Member States a lengthy, costly and complex procedure as demonstrated in this Section.

g) Lack of transparency of the decision-making process

According to the survey done by victim support organizations, the criteria for compensation in their Member State, many respondents said it was not at all transparent or easy to understand (see Figure 6).

h) The limited use of alternatives to judicial proceedings

Claiming compensation from the offender through judicial proceedings is in most Member States a lengthy, costly and complex procedure as demonstrated in this Section. Alternative approaches to seek compensation from the offender include the use of mediation and restorative justice. In addition to acting as a form of compensation, these approaches bring extra benefits such as enhancing the victim's re-adaptation into society. Such alternatives are not applied in some Member States. The relative low variety of approaches in seeking or claiming compensation may further limit victims' access to compensation.

i) The limited scope for review of the compensation decision

Victims have limited scope to ask for a review of the decision or to appeal to the decision on compensation. This may have the effect of discouraging potential claimants and/ or leading to situations where clear principles and procedures are not applied. State Compensation regimes do not allow for a review of the decision on compensation in some member states.

¹⁹⁰ CBC report Victim Support Europe

j) Lack of respectful treatment and risks of secondary victimisation

- Complex compensation procedure are stressful and hinder the recovery process:

Research has indeed shown that the additional administrative and practical burden can be very hard for victims to bear and cause additional distress. Particular procedural obstacles may not only have the effect of discouraging potential claimants but also lead to situations where clear principles and procedures are not applied. The factors contributing to the current situation are the following:

In Sweden, respectful treatment of victims during the procedure of claiming and obtaining compensation has been placed at the forefront. According to Frederik Mellqvist:

‘There are special lawyers which are used for victims of sexual crimes and minors. You could also have someone who represents you as a victim since the prosecutor isn’t really filling that role, so you need someone on your side as the offender has a lawyer and often the victim has no one. The courts have been working a lot with how to treat victims respectfully. The courts are focusing a lot more on soft skills; how to deal with people. The amount of people in courts and in the police is sufficient, we do not have a problem of under-staffing to deal with the victims themselves, but you need them to work in a specific way – but it’s getting better, slowly, slowly.’

Research points to the lack of respectful treatment by authorities when communicating with victims. Experts explain how the treatment by authorities can be the product of a lack of knowledge on trauma, victims’ needs and vulnerability.

k) Cross-border victimisation

- Low number of cross-border compensation claims

The number of cross-border compensation claims are in stark contrast with the estimated numbers of cross-border crimes. Very few victims of cross-border victims apply for compensation abroad.

According to the Many of the compensation authorities have relatively little experience in assisting cross-border compensation claims. They acknowledge that the limited experience has an influence on the lack of structural reporting on the issue; development of internal procedures and information provision.

The European Council Directive offers a framework for collaboration on cross-border compensation claims but leaves the responsibility for procedures completely in the hands of the Member States. National contact points interviewed all point to the enormous difference between Member States when it comes to eligibility criteria, compensation provided, amounts for compensation, success-rates, procedures and decisions made. While the EC Council Directive strives to facilitate fair and appropriate compensation to all victims of crime the current differences between Member States raise some concerns. Currently whether, how much and after how much time you receive compensation for a similar crime has extreme differences between Member States.

While some Member states have success-rates of up to 80% for cross-border compensation claims others merely have close to 3%. Some Member States can offer emergencies compensations, while others cannot. At the same time maximum amounts paid vary from a few thousands of euros to 500,000 pounds. Compensation claims can be paid out in France in days while in other countries procedures can take up many years. Estimated per capita investment of governments in compensation for victims of crime differs greatly between Member States These differences do not only affect cross-border victims and national victims of crime. In addition, they raise concerns when striving to support fair and appropriate compensation for victims of crime.

Besides, as explained above, lack of information about national compensation schemes is even more problematic for victims in cross-border cases. It is often more difficult for victims in cross-border cases to find out about the existing compensation in the Member State on which territory the crime took place.

Also the great diversity among the applicable procedure in different Member States make it more difficult for victims in cross-border cases.

As explained above, the great diversity in the amounts available for victims for the same crime creates situations of inequality between victims of the same crime if committed in different Member States. For instance, the maximum amounts paid by some states is only up to 2000 euro, other countries have a maximum of 125,000 euro or up to 500,000 pounds per victim and some Member States grant, in case of terrorism, full reparation or pension¹⁹¹ While cost of living and income standards in different Member States differ greatly, the difference in amounts of compensation paid to victims does not seem to align with these differences.

- [Lack of collaboration across Member States](#)

Member States¹⁹² reported a dramatically low number of cross-border cases. 10 countries provided data regarding cross-border cases during the years 2015, 2016 and 2017: altogether these States managed 602 cases during the three years (from which 541 were reported by AT and DE). The low number of cross-border cases can be due to lack of awareness, lack of available information, language barriers including the costs of translation and the lack of possibility of filing claims directly with the national authority - though there is compensation system established at national levels and even if the victim has information on compensation, he/she cannot easily access to his rights as it is not possible in all Member States to file cross-border claims directly with the national deciding authority.

Collaboration between national contact points is valued as one of the key factors in assuring good and effective cross-border compensation for victims of crime. The 2004 Compensation Directive stipulates the need for regular meetings of national contact points. All national contact points interviewed strongly applaud promotion of these meetings.

The benefits of regular meetings are manifold **1)** Bring national authorities together to discuss European policy and legislation on Cross-border Compensation; **2)** Promote building of relationships between National Compensation Authorities which in its turn facilitates further collaboration; **3)** Offer a forum to ask questions bilaterally on procedures to claim for compensation and specific cases; **4)** Share good practices on cross-border compensation procedures, information provision and collaborations.

¹⁹¹In Germany , a victim that has a significant level of lasting disability due to a similar violent crime might receive compensation under the form of a pension

¹⁹²Data collection by ENVR on Member State compensation schemes

Next to collaborations as an EU-wide network compensation authorities strongly value and appreciate good bilateral contacts and information sharing as a foundation for collaboration on cross-border compensation. Bilateral or trilateral visits can promote collaboration between countries who share many cases. It would moreover facilitate and could even decrease costs of collaboration.

Surely, promotion for national contact points to develop and establish themselves as strong networks requires funding. In previous years less initiatives (or funding) for facilitating meeting of compensation points has dwindled. To reinforce the network appropriate investment, coordination and sense of initiative is needed. Cross-border collaboration of compensation authorities should be promoted. The costs of weak collaboration can be much greater on the long run both for governments and victims.

A reinforced network can improve collaboration and invite all Member States to engage and use the rights stipulated in the EC Council Directive on compensation. Currently, some Member States have stepped away from using the provisions in the EC Directive as they feel assisting victims in claiming compensation abroad is more harmful than positive for the victim's well-being.

l) Lack of sufficient number of professional and multidisciplinary free support services in the Member states able to meet the different general and personalized needs of the victims according their own characteristics or type of crime

While in the last few years, we have witnessed a strengthening of the number, professionalism and multidisciplinary aspect of services to help victims, whether public or associative, there are still many shortcomings:

- Many countries are waiting for the victim to contact them and do not organize offers immediate support by themselves. Yet many victims have neither the knowledge nor often the strength or the courage to approach a service
- There are very few people with referrals assigned by victim to coordinate the response to all of their needs. There is still too little immediate and short-term care to provide psychological and practical support (arranging the displacement of loved ones, childcare, moving or redevelopment etc.)
- The provision of services to victims does not take sufficient account of the victims' individual needs related to the characteristics of the person, his environment and the crime.

In addition, in many Member States there is not sufficient financial support to ensure proper functioning of victim support services. National support services often lack of the needed expertise (in particular when it comes to specific needs of victims such as post trauma treatment and accompanying towards resilience and self-development

m) Lack of compensation in case of violent acts which occur outside EU or with non EU residents

The 2004 Compensation Directive does not provide for any obligation to compensate victims for non EU victims in the case of violent acts committed in Europe, which creates inequality of treatment between victims of crime that took place on the territory of an EU Member States. The EU rules also do not provide for compensation for European victims or residing in Europe for acts committed outside European territory.

According to the ENVR study, most Member States do not compensate their nationals who were victimised abroad. Only several Member States (AT, BE, CZ, FR, LU, LV and SE) compensate their nationals victimised abroad and only if specific conditions are met.

Non-EU citizen victims residing legally in the EU are eligible for state compensation in domestic and cross-border cases. They are not compensated in CY, FI, HR, LU, PL. In, SK they are compensated only under specific conditions, and in FR only in domestic cases.

Undocumented migrants can be compensated in BE, IE, and under certain conditions in ES, NL and SK.¹⁹³

B. Specific problems

Victims of certain types of crime have specific needs and correlated specific problems that are related to the type and nature of a particular crime. These needs and problems might not necessarily differ in nature from the needs and problems of victims of other crimes. They differ rather in a degree or possibility for implementation.¹⁹⁴ Victims of certain types of crimes, such as gender-based violence, trafficking in human beings, terrorism or homicide may have special requirements within the basic needs of other victims of crime. Understanding the specific needs and problems of each group of victims is crucial to ensuring that every victim is supported, informed, compensated, and protected in the way they need to be¹⁹⁵.

1. Terrorism

This part has been mostly prepared on the basis of information from the research by victims support organisations. In Particular, it includes the outcome of the surveys among victims, victim associations and victim support organisations. These responses indicate that victims of terrorism experience all problems faced by *all* victims of crime, with additional – more specific – challenges.

a) Information

Survey results, victims' interviews and discussions with stakeholders and victim support organisations illustrate that victims of terrorism are not sufficiently informed about their rights to claim compensation.

When asked to provide examples of how information in the aftermath of a terrorist attack could be improved, a large number of victims suggested a personal and direct approach to victims (speaking to someone in person who can explain how compensation works and what their rights are). Also having one single contact person, a professional who knows the victim and their individual experience is a suggestion which is echoed by an important majority of respondents.

94% of respondents support the importance of providing victims of terrorism with information in their own language, this can be an especially problematic issue when providing information to victims of

¹⁹³ Data collection by ENVR on Member States compensation schemes

¹⁹⁴ R. Letschert, I. Staiger and A. Pemberton (Eds.), *Assisting Victims of Terrorism – Towards a European Standard of Justice*, 2008, p. 13:

¹⁹⁵ In this sense see [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU\(2017\)596805_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596805/IPOL_STU(2017)596805_EN.pdf)

terrorism. Wide-scale terrorist attacks often target busy, public spaces, where the presence of tourists is especially high; Berlin Christmas Market, La Rambla in Barcelona, London's Westminster Bridge and Brussels' metro and international airport, and the Paris bombings which targeted a concert of an American rock band and an international football match at the Stade de France. Hence, the importance to provide information in multiple languages is especially relevant in the case of a terrorist attack.

As aforementioned, 82% of survey respondents were victims of an attack which took place in France, or French victims of an attack abroad. As such, general responses disproportionately represent that treatment of victims of terrorism in France, and of French nationals in cross-border situations. We must not neglect that in comparison to the European average treatment of victims of terrorism, France excels. As such, survey responses may be more positive than a survey from which respondents were dominantly Belgian or Spanish, for example. As an illustration, when asked to evaluate their satisfaction with the timing of information provision, 85% of Belgian respondents declared to be 'unsatisfied or very unsatisfied', compared to 29% of French respondents.

Despite the proven importance of providing victims with information and assistance directly after a crime, only 7% of respondents said they were informed of their right to claim compensation within 72 hours of the attack. According to our survey, the average time the victim waited before being informed of their right to claim compensation was 1 month after the time of the attack. As one victim reveals:

'For one year I didn't understand what happened because I didn't know I was a victim. I was in trouble. Only one year later I discovered that I am a victim and I'm heavily injured psychologically. Only one year after the event I starting having difficulties.'
- Victim's testimony from interview.

Offering victims of all crime timely and rapid access to information is intrinsically linked to their access to compensation; especially in Member States where deadlines to report the crime and apply for compensation are stringent.

In a similar light, overall analysis of survey results demonstrate that information received was totally or very incomplete and incoherences between different sources adds confusion and anguish to an already chaotic situation. Not only victims themselves, but also victim support organisations, echoed that incoherent, fragmented and contradictory information presented a major challenge to victims of terrorism in general, and more specifically with their access to compensation. As an example, according to the E-Justice website¹⁹⁶, victims of crime in Poland have a deadline of 5 years to submit a claim for compensation, whereas FRANET report that the deadline is 2 years¹⁹⁷.

¹⁹⁶ https://e-justice.europa.eu/content_if_my_claim_is_to_be_considered_in_this_country-491-pl-en.do?member=1

¹⁹⁷ FRANET, Victim Support Services in the EU: An overview and assessment of victims' rights in practice Poland, 2014, FRANET contractor: Helsinki Foundation for Human Rights. Authors: Szuleka, M., Smętek, J., Plińska, W., Kocikowski, M.

An expert on compensation from a national compensation authority told us, 'on E-Justice portal there is some good information so we know who to contact'. As the E-justice portal serves as an official source of reference for not only individuals but also national compensation authorities, it is essential that this information is accurate, coherent and reliable. In the case of a compensation authority, or a victim support organisation, advising a cross-border victim, contradictory information from official sources leads to victims being misinformed, and potentially may have such detrimental consequences such as missing a deadline to apply for compensation. Survey respondents responded in their majority that **lack of clear guidance** on how to obtain compensation discouraged or prevented them from seeking compensation, with especially high figures from non-French national respondents (even though 48% of French respondents claimed this was a negative factor). Likewise, 59.5% of respondents claimed a **lack of information** discouraged or prevented them for seeking and obtaining compensation.

Victim support organisation concurred; when asked if information on compensation was sufficiently accessible to victims of terrorism, only 33% of respondents agreed that it was.

'Victims require personalised information, and not only through emails or online. Information must be provided on cases by case, in person, with enough time for explanations and respectful treatment. A single contact person in order to avoid the need to re-explain several times, and someone who coordinates.'

– Victim interview testimony

b) Re-victimisation and lack of respectful treatment

76% of respondents claimed that **re-victimisation** (having to repeat and relive details of the attack) discouraged or prevented them from seeking and obtaining compensation.

Victims of terrorism attract important media attention, which can be notoriously insensitive, often exploiting the victims' personal experience, which may lead to secondary victimisation. With this in mind, there is a dual need for victims of terrorism to be supported when dealing with the media, but also for the media to act respectfully and sensitively in their reaction to the event.

'It is very often that re-traumatisation happens during court proceedings. We must remember that people are there to judge you, it's a heavy toll for someone's mental processing.'

As Katja Gasperini of EMDR Europe explains:

Re-victimisation may be caused by many factors, but we have chosen to group this problem with respectful treatment as many victims shared that they were re-victimised as a direct result to being treated in an undignified manner throughout the compensation procedure. A non-negligible number of

voices spoke out against disrespectful and insensitive treatment from police officers, lawyers, compensation authorities, insurance companies, and other official figures they encountered as victims of terrorism. A call for all administrative personnel who deal with processing compensation claims to adopt a more empathetic, dignified and sensitive approach towards victims was expressed throughout the survey.

Dr Nehama explains the importance of respectful treatment in the context of the aftermath of a terrorist attack¹⁹⁸:

“The victims are injured people and, therefore, extremely sensitised. Any information that is provided to them must consider their feelings and act with delicacy, respect and generosity. Both administrations and the media are obliged to know the mind set of the victims and act at all times with due sensitivity.”

Disrespectful and insensitive treatment by the media is an especially prevalent problem regarding victims of terrorism. As Katja Gasperini remarks:

‘It is all sensational communication for the media. It’s horrible for the victims. If the media has to intervene, it should be to educate society as much as possible, not to use the experience to create a phenomenon within the media. The media blow up a story to sell papers, get more hits online. They sensationalise the story, they give so much attention to the terrorists and they invade the privacy and sensitivity which is so essential to the victims at this early stage.’

In addition to general support, many victims of terrorism find the greatest comfort and help **through their own peers** – those have been through the same or similar experience.

According to a survey conducted by victim support association among the victims of terrorism¹⁹⁹, the most highlighted victims' needs include **access to psychological support and access to financial assistance**. When it comes to psychological support, most Member States do not offer free-of-charge psychological follow-up. Moreover, those who offer some level coverage often limit this to several sessions, falling short of what victims actually need. This is therefore a necessity which victims believe should be covered by compensation. The psychological consequences faced by victims and indirect victims of terrorist attacks is well known requiring that victims of terrorism receive immediate, continued and tailored therapy.

¹⁹⁸ Interview Dr Raúl Nehama, Spanish psychiatrist, in the context of this Report translated from the original in Spanish

¹⁹⁹ Victims support services under the lead of V Europe conducted in the course of 2018 a survey about specific compensation needs of victims of terrorism. The survey gathered over 200 responses from individual victims and victims' associations from France, Belgium and Spain.

Some victims may not develop signs of trauma until many years after the attack, especially in cases of Post Traumatic Stress Disorder. In this light, victims highlight the importance of financial intervention for psychological treatment not only in the immediate aftermath of an attack, but for as long as it is necessary.

Psychological trauma is often accompanied by wide-reaching economic consequences, including; adaptation of living arrangements, reduced earnings due to loss of productivity through work absence and/or early retirement, greater probability of divorce, cost of medication, hospitalisation and additional therapy sessions etc.

Victims repeatedly referred to the need for **immediate financial assistance** under the form of **an emergency payment** to cover loss of earnings, medical costs, and rehabilitation expenses immediately after an attack. As highlighted by victims themselves, they would like to see that:

The State is taking its responsibility and ensuring quick and easy access to compensation. No previous administrative requirements. Clear defined amounts. No deadlines.- Victim interview testimony, victim of terrorism questionnaire

Other problems highlighted by victims in the survey include: lack of recognition and acknowledgment of their victims' status (this includes lack of recognition of different forms of damages, such as loss incurred and the continued psychological trauma which victims of

c) Eligibility

As we have seen through the 'needs of victims of terrorism' section, the designation of *who* is a victim of terrorism is open to various interpretations. There are direct victims; those in close vicinity of the physical attack and were physically injured. Other victims who were not physically but psychologically injured may also be considered to be direct victims. First-respondents to a terrorist attack may be victims, alongside the community as a whole. The **lack of unified definition of Victims of terrorism** creates a problem when applying for compensation and knowing who is eligible to do so. A lack of a clear European definition leads to discrepancies in systems across the EU.

Varying and stringent **deadlines** to report oneself as a victim of terrorism and to be recognised as such is especially problematic for victims of terrorism, who may not develop signs of psychological trauma until years after the attack. As one victim argues;

'The State taking its responsibility and ensuring quick and easy access to compensation. No previous administrative requirements. Clear defined amounts. No deadlines.'
Victim's testimony from questionnaire.

Linked to problems with information, short deadlines do not take into consideration that a victim may simply not be aware of their right to apply for compensation until after the deadline has passed. For one victim, the information arrived too late:

I learnt in the press about the possibility of getting compensation. I discovered the Commission for the victims 6 months after the events in the press. Nobody told me that.'

- Victim's testimony from interview.

Victims also voiced their discontentment with eligibility criteria which differentiate compensation amounts between victims who have suffered the same damage. Criteria for evaluating compensation amounts may be calculated based on income, the individual's medical insurance scheme, and a range of other various factors. Victims argue that this creates tension between victims and a competitive environment. Compensation eligibility criteria which encourage a competitive environment between victims is in distinct contradiction to their need for peer support.

d) Administrative difficulties

60% of victim respondents cited '**duration and complexity of procedure**' as a discouraging and/or preventative factor when deciding to apply for compensation. Likewise, the need to seek compensation from an **insurance company** before the state compensation scheme (50%) were obstacles highlighted by a majority of the Belgian survey respondents. To the same questions, respondents in France highlighted as the main obstacle the complexity and duration of the procedure (60%), followed by the **lack of information and clear guidance** (over 50%) and **gathering of evidence and documents** (46%).

In certain member states, the obligation to request compensation from an insurance company before accessing state compensation represents an elementary obstacle to accessing compensation. Proceedings with insurance companies have proven long and arduous in Belgium, where victims of the 2016 terrorist attacks continue today to try and access compensation through this means.

'The procedure is very complex and requires professional assistance. Victims do not understand the technical language and procedure.'

- Victim's testimony

'I'm in process with the insurance company to be recognised and it is not yet complete.'

- Victim's testimony (32 months after attack)

e) Lack of payments and delays in payments

In some Member States, emergency compensation -when available- is not provided in time. Concerning emergency payment, 53% of respondents reported that they did not receive emergency payment. However, 46% of respondent did not claim for an emergency payment, 28% report that emergency payment scheme did not exist in their country of residence, and 14% state that they did not have the right to apply. Only 30% of all respondents declared to have received emergency payment.

'When everything happened, the pension was immediately removed. The income from work was lacking from my husband so his father and I carried on working in the tobacco shop. This with the intent of selling in order to be able to pay off the mortgage. This lasted 9 months and I entered a vortex in which I could not manage all the things we used to manage the two of us. So, I sold the tobacco shop, at a ridiculous price in order to pay off the mortgage and pay the debts contracted in the nine months. I found myself without a job, with a survivor's pension 500 euros and the help of my in-laws was indispensable for me.'

- Interview with the wife of homicide victim-

When emergency payment is available, it often fails to meet the costs endured by the victim. For example, 70.8% of Belgian respondents claimed that emergency payment was not enough to cover emergency costs.

Calls for improvements to emergency payment schemes was echoed throughout the questionnaire results, with 98% responses indicating that emergency payment should be allocated to direct victims of terrorism. 85% of respondent believe emergency payment schemes should encompass family members of deceased victims.

f) Cross border victims of terrorism

Cross border victims of *all* crimes face increased difficulties in applying and accessing compensation in comparison to their resident counterparts. Cross border victims of terrorism may face additional obstacles due to the precise nature of the crime. Since 1980, 9 member states have fallen victim to a terrorist attack²⁰⁰, meaning that 19 European member states have no recent history with terrorist attacks and how to coordinate victims of terrorism within their borders. This may go some way in explaining the difficulties victims express within their national compensation authorities when claiming for compensation.

According to our victims' questionnaire, cross border victims of terrorism indicate that the major obstacles which block their access to compensation include (from the most commonly indicated); the complexity of the procedure, general lack of information, lack of assistance, difficulties gathering

200 Italy, Germany, UK, Spain, Malta, Austria, Greece, France and Belgium.

evidence, and stringent eligibility criteria. Furthermore, 82% of cross border victims of terrorism reveal that they received no assistance.

2. Trafficking

a) State of play

The starting point of discussion over victims of trafficking is the already existing EU legislation, namely the 'Anti-trafficking Directive'. The Directive sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims. It is based on the human rights approach, gender specific and child sensitive. It contains provisions on victims' protection, assistance and support, but also on prevention and prosecution of the crime. The Anti-trafficking Directive explicitly states in Article 17 that Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. Moreover, Member States must ensure that victims of trafficking in human beings, including children have access without delay to free legal representation and legal counselling, including for the purpose of claiming compensation, where they do not have sufficient financial resources (Articles 12(2) and 15(2) of the Directive).

Moreover, the approach in recital (13) of the Anti-trafficking Directive lays down that the use of seized and confiscated instrumentality and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities should be encouraged.

Member States were required to complete the transposition of the Anti-trafficking Directive by 6 April 2013. All Member States bound by the Directive had communicated their transposition measures to the European Commission. With regard to enacting the EU Anti-trafficking Directive into national laws, the European Commission's 'Transposition report' concluded that while there has been substantial efforts by EU Member States, but there still remains significant room for improvement in particular as regards in numerous area including, specific child protection measures, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention. The European Commission continues monitoring the correct and complete transposition of the Anti-trafficking Directive and its implementation by Member States in accordance with its powers under the Treaties and may take the appropriate actions.

A number of Commission report, studies and document address the matter of compensation to victims of trafficking. In 2017 the Commission issued its Communication identifying further concrete actions to address trafficking in human beings. As a key action of the 2017 Commission Communication, the report by EIGE in cooperation with the Commission provides guidance to Member States on gender-specific measures to better identify, help and support victims of trafficking in human beings, including also compensation. In particular EIGE report refers to access to justice as victims' ability to claim legal rights through legal assistance, to participate in criminal investigations and proceedings against their

trafficker(s), and to access compensation. The European Commission has allocated funding for projects

COUNTRY FOCUS: BELGIUM

Accessing psychological support may be difficult and costly.

To use Belgium as a working example, psychologists work independently and establish their own tariffs. The average cost for a one-hour consultation in Brussels is 50 euros, with prices varying according to the psychologist and the needs of the patient. Nevertheless, price per consultation rarely falls below 40/45 euros per hour. Health insurance can reimburse up to 15 euros per consultation depending on the patient's financial situation, but it is limited to a total of around 180 euros of total reimbursement per year (depending on your health insurance plan and income level). Aside from independent psychologists, mental health facilities with multidisciplinary teams exist throughout the country, offering a cheaper alternative for psychological treatment, but the average waiting time for a consultation at the time of writing is a reported 6 months (in Brussels, waiting times vary geographically). Belgium is not a stand-alone example. Saturation of mental health services, costly consultations and long waiting times have been recorded across Europe.

Sources:

- Interview with an independent Clinical Psychologist, based in Brussels and member of the *Fédération Belge des Psychologues*, 09.01.2019.
- Monetary information from the website of Belgian Healthcare Insurance provider 'Mutualité Chrétienne', *Comment bénéficier de l'avantage psychologie ?* Available via : <https://www.mc.be/mes-avantages/soins-au-quotidien/psycho>
- <https://digital.nhs.uk/data-and-information/publications/statistical/psychological-therapies-annual-reports-on-the-use-of-iapt-services/annual-report-2016-17-further-analyses#key-facts>
- Cases Chantal, Salines Emmanuelle, « Statistiques en psychiatrie en France : données de cadrage », *Revue française des affaires sociales*, 1/2004 (n°1), p 181-204, https://ec.europa.eu/health/sites/health/files/mental_health/docs/ev_20161006_co02_en.pdf

related to compensation to victims of trafficking in human beings, including from DG HOME funds (ISEC).

b) Specific needs and problems

The type of compensation provided and the procedures for awarding the compensation varies between the Member States, while generally including payment for medical and psychological treatment, loss of income, legal fees and funeral expenses. Some Member States also compensate for non-material damages, such as physical and psychological suffering. As for the procedures to obtain compensation, many Member States provide for a dual system whereby the victim can bring a civil action for compensation against the perpetrator within the criminal procedure; if the victim is not fully compensated through this procedure, there is still a possibility to receive compensation from the State. Other Member States have special provisions governing compensation for victims of crimes (including violent crimes) or for injuries obtained through such crimes. In certain countries, special fund for victims of violent crimes has been set up from which victims receive compensation from the State.

Various EU reports and the contributions from the EU civil society platform against trafficking in human beings for the survey launched by EU ATC for their contributions to the work of the Special Adviser identify a number of challenges. Civil society contributions overall highlight that significant challenges exist with respect to access to compensation for victims of trafficking, with information on the implementation of national provisions in this sense being still limited, and procedures complex. Particularly victims of trafficking for sexual exploitation sometimes are not able to meet requirements for producing evidence of verifiable expenses or employment losses. Civil society organisations highlight that the type of exploitation suffered by victim of trafficking plays an important part in the accessibility of compensation: victims trafficked for labour exploitation have additional avenues to claim compensation, including loss of earnings, whereas victims trafficked for sexual exploitation do not have verifiable expenses or employment losses and cannot avail in many cases to work related bodies. The psychological harm caused by sexual exploitation, trafficking for prostitution is more difficult to prove and assess than physical injuries. Trafficked victims for forced begging and for forced criminalities often not recognised as victims when convicted for those minor offences.

EIGE's report on gender specific measures²⁰¹ notes that:

“women are in many countries disadvantaged when it comes to accessing education and employment opportunities. As a result, they are more likely to be preyed upon by traffickers, including those who use false promises of employment as a ruse. A background of socio-economic disadvantage makes it less likely that a victim who has recently escaped a trafficking situation will be able to support herself. A compensation payment can provide vital cushioning for a woman to enable her to support herself, prevent her falling back into exploitation as a result of economic duress, or otherwise.” The same EIGE report highlights that the EU compensation provisions fail to specify the ambit of what types of harms could/should be covered by compensation. It is left to Member States whether, and to what extent, psychological harm is included. “When it comes to women victims of trafficking for sexual exploitation, in many cases they experience harms that are not material, in the sense that they are difficult to quantify — there is no tangible, objective measurement of harm. While this is the case for many violent crimes, the psychological damage for trafficking victims, in particular, is in many cases extensive and long-lasting.”

Civil society organisations reported that victims of trafficking may encounter difficulties in receiving compensation in cases, where the crime itself doesn't take place in the Member States where the victim stays or where the victim left the territory of the Member State where the crime took place.

Civil society organisations reported that in case it is not proven that the trafficking offence involved the use of direct violence against the victim, victims have difficulty to access compensation. Child victims of trafficking seems to have more difficulty including access to compensation. Children's compensation should serve to find durable solutions for children and need to take into account in particular their lack of

²⁰¹ <https://eige.europa.eu/rdc/eige-publications/gender-specific-measures-anti-trafficking-actions-report>

access to education, missed opportunities, loss of primary carers, emotional support. The impact of online child sexual exploitation related to child trafficking, for example livestreaming is less researched and more is needed to training professionals. Repetitive-trauma of children needs to be avoided in the applicable procedures. Civil society organisations highlight that children may need also financial advice upon receiving the compensation.

The methodologies defining the amount of compensation may not be able to take into account the specificities of damage claim for victims of THB, for example for sexual or labour exploitation as to loss of income or, compensation of unfair working conditions; measuring pains and suffering, etc..

There are difficulties to establish the amount of material and non- material damages and the procedures and required documentation may contribute to secondary victimization. Compensation amounts differ between EU countries and within the same country. Training of legal professionals in the criminal justice system (lawyers, prosecutors, judges) dealing with compensation of THB victims is needed.

Civil society organisations stress against the lengthy procedures to receiving compensation given the particularly vulnerable situation of victims of THB. Linking conditions to free legal aid, such as conditioning it to financial test or requiring to having stay or legal residence exceeding 90 days country was highlighted by civil society organisations causing difficulty to realize compensation to victims of THB. Being complex crime, civil society organisations highlight the difficulties to obtain compensation either via state fund or in the legal proceedings due to obstacles such as lack of awareness among professionals within the police and judicial system, having interpreters, lack of access to legal aid and adequate information to victims, postponement of trials and long duration of criminal and civil proceedings or the return of foreign victims to their country of origin, or cases when the exploitation occurred outside of the territory of the. In other cases, where compensation is granted difficulties arise to enforce to receive their actual entitlement. Equally hinders compensation when perpetrators are not found or have moved their assets abroad or have declared themselves bankrupted. Confiscation of criminal proceeds was observed by civil society organisations only to a limited extent as countries face significant challenges in identifying, tracing, seizing and confiscating proceeds of crimes. Civil society organisations note the pressing need for more pro-active investigations into traffickers and their assets, which can prove basis to compensate victims from seized and confiscated assets of crime proceeds. Civil society organisations highlight that victims of cross border crimes of trafficking in human beings might encounter different obstacles when claiming compensation and do not exclude some potential differences appearing when it comes to national victims and others from other EU or non – EU countries.

The restorative justice function of compensation is important for victims' recovery, as it acknowledges the wrongdoing and recognises the status and rights of the victim. Since trafficked persons experience physical and psychological consequences of the exploitation and abuses they suffer, compensation helps redefining victims as 'subjects' of justice rather than 'objects'. Compensation can support victims to remedy the damage done, helps them towards their financial and economic autonomy and can reduce their vulnerability factor(s).

Victims have mixed attitude towards compensation received from the traffickers, in some cases they see important to receive direct justice from the perpetrator in other cases they rather refuse the 'dirty money' from the crime.

3. Gender-based violence

Several key characteristics of gender-based violence result in particular hurdles/problems that are characteristic for victims of this type of crime. These problems – often structural and rooted into the European societies- have impact on access to compensation for victims of this type of crime

According to the Istanbul Convention, gender-based violence includes acts causing “physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. Domestic or intimate partner violence, sexual violence (including online), are all examples of the forms gender-based violence takes. The Istanbul Convention (which mirrors to a large extent the Victims’ Rights Directive) sets out the following specific support needs of gender-based violence victims : information, general and specialist support services, shelters, telephone helplines, specific support for victims of sexual violence, protection and support for child witnesses. Article 30 specifies that the State Party should ensure that victims of violence against women and domestic violence have the right to claim compensation from perpetrators for any of the offences established in accordance with the Convention.

Several key characteristics of gender-based violence result in particular hurdles/problems that are characteristic for victims of this type of crime. These problems – often structural and rooted into the European societies- have impact on access to compensation for victims of this type of crime. Gender-based violence is rooted in, and a manifestation of, structural gender inequality. The European Institute for Gender Equality explains that “gender-based violence may be normalised and reproduced due to **structural inequalities**, such as societal norms, attitudes and stereotypes around gender generally and violence against women specifically. Therefore it is important to acknowledge structural or institutional violence, which can be defined as the subordination of women in economic, social and political life, when attempting to explain the prevalence of violence against women within our societies.”²⁰²

Gender-based violence cannot be divorced from other aspects of inequality, such as **economic inequality**. For example, economic/financial abuse is a common form of intimate partner violence, whereby perpetrators exploit or worsen the economically vulnerable or dependent position of women through controlling and coercive behaviours.

Linked to the normalization of gender-based violence in society, there is a **phenomenon of victim-blaming** that is specific to this type of crime. For example, the Euro barometer 2016 survey on gender-based violence showed that more than a quarter of respondents (27%) thought that sexual intercourse without consent can be justifiable in certain circumstances (e.g. if the victim is drunk or on drugs).

It is also important to note **that rates of reporting gender-based violence to the police are very low**. For instance, the European Fundamental Rights Agency 2014 survey on violence against women revealed that victims reported the most serious incident of partner violence to the police in just 14% of cases, and the most serious incident of non-partner violence in just 13% of cases. The reasons for not reporting are multiple, and include the trouble involved in reporting an incident and a sense that the police will not be able to do anything about the crime.

²⁰² <https://eige.europa.eu/gender-based-violence/what-gender-based-violence/forms-gender-based-violence>

For around one quarter of victims of sexual violence by a partner or non-partner, feeling ashamed or embarrassed about what happened was the reason for not reporting the most serious incident to the police or any other organisation.

Particularly in the case of domestic violence, **the violence is usually perpetrated over a long period of time**, and in the form of different, repeated, coercive and controlling acts. This is relevant both for the extent of the harm for the victim specifically, and also for members of the victim's family, including any children, and community. In cases of femicide, children lose a parent. An additional challenge for victims of domestic violence is that in order to survive, victims tend to have to accept the attitudes of the offender. This creates a barrier for victims to recognise themselves as victims of crime.

e) Needs of gender-based violence victims vis-à-vis compensation

Against this backdrop, civil society organisations reported that a crucial need of victims of gender-based violence is justice. It is important for victims to receive a clear message that what happened to them is not their fault (despite what the perpetrator, people in their social circle, or messages in the media, may have expressed), and is the sole responsibility of the perpetrator. Compensation can serve as a societal recognition that the violence was wrong and the victim should not be blamed.

Moreover, civil society organisations reflected that the level of compensation, beyond simply the availability of it, is important here. They explained that victims of gender-based violence may take the amount of compensation received as a reflection of how seriously the state/society takes the harm they suffered, and the worth of their physical and psychological integrity. In addition to adequately compensating harm and trauma experienced by victims as a result of gender-based violence, compensation should also serve as a form support for an independent life covering among other things therapy costs, loss of earnings and psychological damages. Furthermore, the amount of compensation attributed should take into consideration that in cases of domestic violence, the victim may have to leave their home town in order to be safe from the violence. This means the need for reintegration in a new environment including finding a new job, schools for children, and building up a new support network.

With regard to the delivery of compensation, it is important that there is a state advance of the compensation in cases where there is a delay in extracting the amount from the perpetrator, to ensure that any dependency or traumatic experience is not continued. The way the compensation is delivered should be sensitive to the specific needs of the individual victim.

Women victims of gender-based violence and their children often require special support and protection in legal proceedings because of the high risk of secondary and repeat victimisation, of intimidation and retaliation connected with such violence. Due to the prevalence of victim-blaming attitudes in society, including among professionals in the criminal justice system, and the normalization of gender-based violence²⁰³, victims are vulnerable to re-victimisation during the criminal justice proceedings. Furthermore, retaliation or continuing violence by the perpetrator is a real risk.

²⁰³ Such attitudes are manifested in, for instance, false assumptions that women are likely to make up claims of violence.

Civil society organisations emphasised that practical support is also essential for victims of gender based violence and domestic violence. In the case of domestic violence, the decision to leave an abusive relationship is a complex one, fraught with insecurity and danger. Specialist support services play a crucial role in giving necessary practical support to survivors.

Financial support is complementary to the practical support in order to empower the victims in particular in cases of economic abuse, where the victim becomes economically dependent on the perpetrator.

f) Barriers to accessing compensation

There are several specific barriers that prevent victims of gender-based violence from accessing fair compensation for the harms that they have suffered:

- Provision of the required documentation during the judicial proceedings (in cases of sexual violence, there are often no witnesses, and there may be no physical signs left by the time the victim has a medical examination).
- It is not clear who (police, support organisations, medical professionals, etc.) should be involved when it comes to providing basic information and support, including specifically on compensation. For victims of gender-based violence, it is crucial that specialised support organisations are involved to offer advice. These services also have an important role in empowering victims, which enhances the capacity of victims to endure challenging and lengthy court processes.
- The amount of compensation attributed in gender-based violence cases is often very low. This might in part be related to a lack of awareness and training of judges on the dynamics and traumatic consequences of this type of crime. The amount of compensation should reflect the wide-ranging and long-term harm of gender-based violence, going beyond potential medical and therapy costs, to also cover loss of earnings and broader psychological damages. Compensation should serve as a means for re-building an independent, violence-free life of dignity.

ANNEX IV: GOOD PRACTICES

1. BETTER ACCESS TO INFORMATION

In Canada, the Government of Saskatchewan provides information to victims in plain language. The application form is in plain language and outlines what a victim needs to do. It sets out briefly, what is restitution, how do you ask for it, and what happens next, such as if a restitution order is made how it would be enforced. It also outlines where a victim can go to access further information.²⁰⁴

The Swedish Crime Victim Compensation and Support Authority has a helpline which enables victims to ask questions about the process.²⁰⁵ Victim support organisations in France²⁰⁶, Croatia and Israel²⁰⁷ also have helplines for victims where they provide individual advice on how to deal with the compensation claims and administrative requirements.

Three years ago, all partners in the criminal justice system in the Netherlands decided to communicate with victims at the B1 level²⁰⁸. Texts used to be written at C1 level, but research showed that these texts were too complicated for many citizens. Police, public prosecutor, victim support and a number of other organisations since that moment write texts on their website and in letters at B1 level. This includes texts with legal consequences. Research showed that these texts were much better understood by victims²⁰⁹.

Canada permits indirect victims/secondary to apply for compensation for counselling as can witness of homicide.²¹⁰ Victim can submit a Victim Impact Statement in addition to a Statement of Restitution in advance of sentencing. The Statement of Restitution permits the victim to seek restitution for the crime.²¹¹

The Dutch compensation authority has developed a victim-friendly easily understandable explanatory movie on the right to compensation, the importance of compensation to victims and the role of the state compensation authority²¹².

204 <http://publications.gov.sk.ca/documents/9/82895-VIS-SOR%20fillable%20-%20February%202017.pdf> (Pg. 3)

205 <https://www.brottsoffermyndigheten.se/eng/compensation/service-telephone>

206 Interview study visit France Victimes, 2017

207 Interview Sigal Halmov, NATAL (Israel)

208 B1 refers to the third level of English in the Common European Framework of Reference (CEFR), which is a way to define language levels as defined by the Council of Europe

209 Interview Victor Jammers, Director of Slachtofferhulp Netherlands

210 Government of Saskatchewan, Ministry of Justice: Victims Compensation Application Form - Child Witness of Domestic Violence

<http://publications.gov.sk.ca/documents/9/82400-CWDV%20Application-14Mar16%20final.pdf> Victims Compensation Application Form – Secondary Victim

<http://publications.gov.sk.ca/documents/9/82399-Secondary%20Application-8%20June%202017.pdf> Victims

Compensation Application Form – Homicide Witness [http://publications.gov.sk.ca/documents/9/82401-](http://publications.gov.sk.ca/documents/9/82401-Homicide%20Witness%20Application-14Mar16.pdf)

[Homicide%20Witness%20Application-14Mar16.pdf](http://publications.gov.sk.ca/documents/9/82401-Homicide%20Witness%20Application-14Mar16.pdf)

211 Victim Impact Statement and Restitution <https://www.saskatchewan.ca/residents/justice-crime-and-the-law/victims-of-crime-and-abuse/victim-impact-statement-and-restitution>

212 <https://www.schadefonds.nl/>

The Swedish Crime Victim Compensation and Support Authority offers clear and comprehensive information on state compensation, also in relation to other forms of compensation, in a leaflet that is provided in multiple languages.²¹³ The Dutch state compensation website has a built-in "Google translate" function allows to display the information in all languages.²¹⁴

In Hungary, the Victim Support Service holds training for consular services.

In Spain, a national hotline for gender violence victims (016) is available 24/7 and in Spanish, Catalanian, Galician, Basque, English, French, German, Portuguese, Chinese, Russian, Arabic, Romanian, Bulgarian, Tamazight and other 38 languages through a tele-translation system.

In case of terrorism offences, there is a hotline, which operates in case of crisis and terrorist attacks with multiple victims and is attended by the officers of the Citizen Attention Unit of the Directorate-General for Support of Victims of Terrorism (Ministry of Interior). The hotline is devoted to inform the whole population but, in case of victims, relatives or close friends, the phone call will be transfer to a social worker for a specific attention.²¹⁵

2. ELIGIBILITY CRITERIA

The Israeli compensation authority considers 'acts of recognition and remembrance' eligible for compensation. Next to restitution of made expenses, victims can also request compensation for any commemorative acts or activities such as setting up a memorial site, organising a memorial service or publishing a book to honour the victim of a terrorist attack.²¹⁶

Belgium has also made the state compensation system available for 'occasional rescuers'. This means that people who spontaneously offered assistance to victims of a violent crime without being there in a professional capacity or linked to an organisation also have the right to claim for compensation. For these occasional rescuers, as well as their next of kin, the state recognises the impact of the crime as a reason to be able to access compensation.²¹⁷

Several Member States (AT, BE, CY, CZ, ES, FI, HU, IE, LU, PT, SK) consider violence also in psychological sense when it comes to state compensation. Moreover some Member States (CZ, FI, IE) compensate victims of unintentional crimes as well.²¹⁸

3. FACILITATING PROCEDURAL DIFFICULTIES

Since a number of terrorist attacks struck France in 2015, the French government has consistently and with great strides brought change in the ways victims of terrorism are supported and compensated. One of the most exceptional progress has been made by bringing all key partners (such as France Victimes, relevant ministries) working with victims of crime around the table.

²¹³ <https://www.brottsoffermyndigheten.se/Filer/Broschyrer/Andra%20spr%C3%A5k/Information%20to%20crime%20victims.pdf>

²¹⁴ <https://www.schadefonds.nl/>

²¹⁵ ENVR data collection on compensation schemes

²¹⁶ Interview Sigal Halmov, NATAL (Israel)

²¹⁷ https://justitie.belgium.be/nl/commissiefinancielehulp/voor_wie#a4

²¹⁸ ENVR data collection on compensation schemes

First through the secretary of State on victim support Juliette Méadel and afterwards through the establishment of the DIAV France has made bold choices to improve national and international collaboration to improve the way victims of terrorist attacks (and all victims of crime) are treated in France. In 2017 the first inter-ministerial delegate for victim support (DIAV) was appointed with a team of experts representing 9 ministries (Ministry of Justice, Internal Affairs, Solidarity and Health, Economy and Finances and Ministry of Actions and Public Accounts) in order to make victim support a cross-cutting issue. The objective is clear: to promote the most comprehensive and consistent treatment of victims, with the aim of improving conditions in the long term. This national collaboration has led to a number of policy and strategic changes to tangible practices on the ground. Important is, in comparison to many other member states, is that changes are made not only for victims of terrorism but for all victims of crime. The French government has made itself a forerunner to improve support for victims in a comprehensive and durable way.

Victim Support Netherlands (Slachtofferhulp Nederland) proactively offers assistance to apply for compensation in the Netherlands. When the public prosecutor decides that a case goes to court, he sends a letter to the victim to inform him on his rights. These rights include the right to claim compensation from the offender; the right to speak in court (for the more serious crimes); the right to read the file the public prosecutor sends to the judge (there are exceptions); the right for the victim to add documents to this file; the right to speak with the public prosecutor before the trial (for the more serious crimes). In this letter the victim is informed that he can contact Victim Support NL when he wants support to exercise his rights. The victim may choose to exercise his rights without our support; he may also choose to hire a lawyer. Over the past 1,5 year we have been experimenting with a proactive approach of the victim. Three days after the public prosecutor sends the letter to the victim, we will contact the victim by phone and inform him on his rights and answer any questions he may have. The evaluation showed that this service is highly appreciated by the victim and leads to more victims exercising their right.

The Adult Restitution Program (ARP) and Restitution Civil Enforcement Program (RCEP) in Saskatchewan began as a pilot project in 2009, and now represents best practice in its management of the payment of restitution orders in Canada. Restitution can form part of an offender's sentence and information is made available to offenders, in plain language on what they need to do to make restitution. The Adult Restitution Program (ARP) monitors any supervised restitution orders, such as where an offender would discuss restitution with their probation officer. The Restitution Civil Enforcement Program (RCEP) removes the responsibility on the victim to enforce a restitution order. Rather the RCEP brings civil actions, for failure to pay restitution, on the victim's behalf. The Swedish Crime Victim Compensation and Support Authority has a mechanism to support victims in the collection process through asking victims to give them the power of attorney. The national compensation authority hereby is able to request official documents for the victim.

In Ireland, Members of the Tribunals assist the victim in completing and submitting the forms on a case-by-case basis.²¹⁹

In Bulgaria, the victims are directly contacted by the Expert committee to the National Council for assistance and compensation to victims of crime, which provides them with full assistance.²²⁰

²¹⁹ ENVR data collection on compensation schemes

²²⁰ ENVR data collection on compensation schemes

3. ENSURING RESPECTFUL TREATMENT

After the terrorist attack in Brussels on 22.3.2016 the Belgian government has set up a one stop shop for victims of terrorist attacks within the national compensation system. Thanks to this system and the intrinsic motivation of the director of this one-stop-shop victims are provided with information, assistance and referrals in a humane and personal manner. Each file is followed up intensively and victims have repeatedly expressed their appreciation publicly for the victim-sensitive and individual manner those responsible for the administrative preparation of compensation claims have treated them.²²¹

One of the major hurdles faced by many victims is the delays in obtaining a decision with respect to compensation.²²² The Victims Strategy in England and Wales aims to ‘speed up the process’ of providing compensation to victims of crime.²²³ A new case management system was introduced in the Criminal Injuries Compensation Scheme to ensure that 80% of cases will have a decision within a 12 month period and a fast track process for victims of sexual abuse.²²⁴ It remains to be seen whether this will be done in practice; however, the policy is a welcome development and acknowledges the need for a quick response on compensation for victims.²²⁵

4. CROSS-BORDER VICTIMS

The Project Infovictims was developed with the objective of contributing to increase the information provided to victims of crime about their rights, and the overall functioning of the criminal justice system. Accordingly, there were developed several information materials such as a website, a brochure and a poster. The website has been developed to provide elaborate and specific information on the rights of victims in different Member States – both in the native language as in English. These materials provide information in a simple and clear manner, making it easier for victims of crime to understand the functioning of the criminal justice system.²²⁶

5. VICTIMS OF TERRORISM

States like Spain and Israel have come to the establishment of a strong and comprehensive act describing support of victims of terrorism. Also France has come to the development of different legislative

²²¹ Interview victim of terrorism, interview Belgian compensation Authority - Olivier Lauwers

²²² *Byrne v Criminal Injuries Compensation Tribunal & Ors* [2017] IEHC 28 which held that a decision by the Irish Criminal Injuries Compensation Tribunal scheme should be administered in accordance with the ‘provisions of constitutional justice’ and this includes a ‘reasonably prompt decision’ See also, Maria McDonald, ICCL Guide for Lawyers on the Criminal Justice (Victims of Crime) Act 2017 (February 2018) available at <https://www.iccl.ie/wp-content/uploads/2018/11/5871-EU-Victims-Day-Proof-updated-v2.pdf> pg. 31

²²³ ²²³ Victims Strategy (September 2018) Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746930/victim-strategy.pdf

²²⁴ Victims Strategy (September 2018) Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746930/victim-strategy.pdf pg. 21

²²⁵ Victims Strategy (September 2018) Available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746930/victim-strategy.pdf pg. 19

²²⁶ <http://www.infovictims.com/com/>

measures that offer a comprehensive approach to supporting victims of terrorism after an attack. Financial compensation is one aspect but both Member States have embedded in their legislative framework ample attention for other aspects of reparation and restoration of victims of terrorism.

The Spanish law was developed after a lengthy negotiation process with law makers, victims, philosophers, victim experts to come to a comprehensive proposal of how victims of terrorism should be supported. This Spanish Act goes far beyond financial compensation building the law on the principles of remembrance, dignity, justice and truth. It foresees direct benefits to victims through emotional, medical and financial support but also through education support, tax exemptions and even granting of nationality. For government the Spanish law sets out guidance on supporting consular and diplomatic assistance and commemoration activities and education. The Spanish Act is also formulated in simple and accessible language which enables victims to understand what their rights are.

France has established a number of similar benefits for victims that they have strengthened further since 2015. Of a range of different measures such as tax exemptions, support in employment related issues, victim support, one-stop-shop for information France has also implemented a measure particularly directed at supporting young victims of terrorism.

The statute of Pupille de la nation (child of the nation) has existed since 1917 to support as a state, in its original aim, war orphans. France however also considers minor victims of terrorism (either direct or children of direct victims) as children eligible to receive the state of pupille de la nation. The rights directly linked to this statute can be found on different life domains education (e.g. scholarships), employment (e.g. support to find work), fiscal (e.g. university fees). Another important strength of the French Guarantee Fund is that it proactively and directly contacts victims to support them in accessing compensation.

In Israel a strong law for victims of terrorism includes similar comprehensive measures as those in France and Spain. Next to full reimbursement of expenses for hospitalization and treatment, nursing, medical rehabilitation, medications and medical aid instruments Israel has also embedded a range of other benefits and grants in their legislative framework. It goes from support for commemorative activities, tax reductions and allowance for acquiring home equipment. The Israeli state is also able to make discretionary decisions to support e.g. more distant family members based on the individual and real situation of the victims and their social environment²²⁷. Israel has know a true improvement in policy, programs, and services to a group toward whose sacrifice society feels indebted.²²⁸

Whilst in France it seems that developments in support for victims of terrorism have repeatedly led to a strengthening of the compensation system for all victims of crime, it does not seem the case for Spain or Israel. The rights of other types of violent crime (except for domestic violence in Spain) to compensation and other forms of support fade in resemblance with the rights accorded to victims of terrorism²²⁹. In Belgium, recent legislative evolutions have been done that aim to install a faster, simplified procedure with less administrative burdens and with a higher amount of possible advance aid (up to 125.000 euro) so that victims of terrorist acts should receive a financial aid more quickly in the future.²³⁰

²²⁷ Yanay, U. (1994). Assistance to civilian casualties of hostile actions. *Social Security*, 3, 137-63.

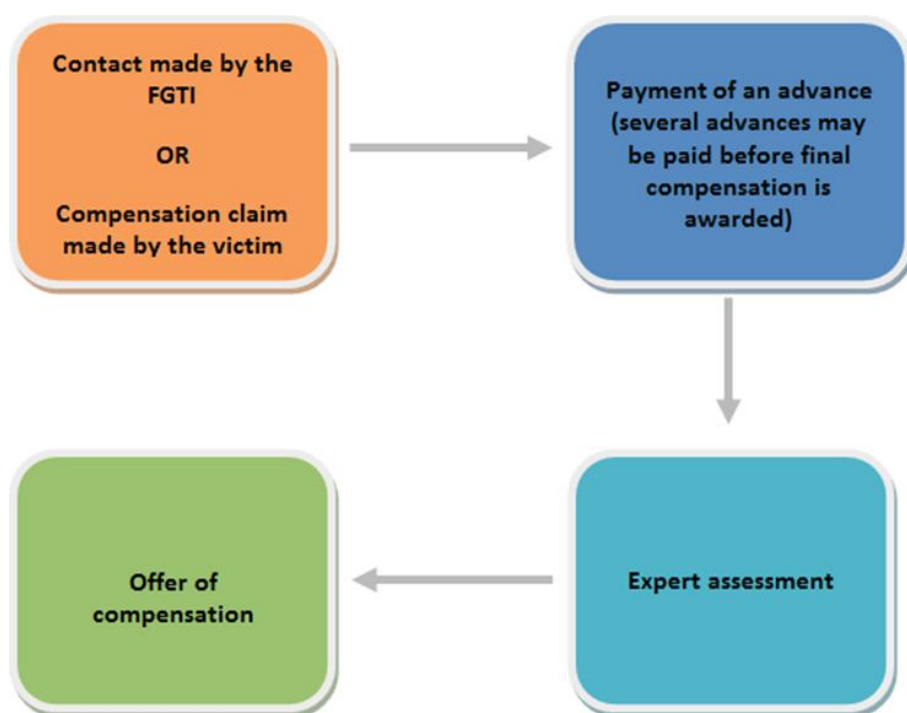
²²⁸ Doron, A. & Kramer, R.M., *The Welfare State in Israel*, Westview, Boulder, Col., 1991.

²²⁹ Interview Israeli victim support specialist

²³⁰ ENVR data collection on compensation schemes

ANNEX V : FRENCH SYSTEM OF COMPENSATION ²³¹

1. COMPENSATION PROCEDURE



A. INITIAL CONTACT - SUBMITTING A COMPENSATION CLAIM

As soon as the identity of the victims is known, the FGTI makes contact with the beneficiaries of deceased victims and physically injured victims named on the single list drawn up by the public prosecutor.

Any person who believes they are a victim of a terrorist act may also apply directly to the FGTI up to ten years after medico-legal consolidation (i.e. when a doctor has established that the victim's condition is unlikely to change).

In the event of criminal proceedings, the compensation claim may be submitted within one year of the ruling. Since 2012, the Board of Directors of the FGTI may, in all cases and at the request of victims whose claims fall outside the prescribed time limit, decide whether or not to lift the time limit.

²³¹ GUIDE TO COMPENSATION FOR VICTIMS OF TERRORIST ACTS; FGTI The Guarantee Fund for Victims of Terrorist Acts and other Offences

The victim then submits to the FGTI the reasons why they were unable to assert their rights within the prescribed time limit.

If the compensation claim is admissible, an initial advance is paid in the month following receipt of all the documents requested (cf. point 3: Practical aspects).

If the compensation claim is inadmissible (ineligibility), the victim may appeal against this ruling to the FGTI in writing or by submitting additional documents.

B. PAYMENT OF AN ADVANCE

An advance on compensation is paid by the Guarantee Fund to allow the victim to meet initial costs while awaiting final compensation.

It is paid in the month following receipt of the complete claim, provided the admissibility criteria are met. The amount depends on the level of injury and the supporting documents submitted.

Following an initial payment, additional advances may then be paid to the victim based on costs incurred or future costs and the expected end status of the injury.

The FGTI also covers funeral costs and, in principle, pays them directly to the funeral directors, up to the average cost of funerals.

C. MEDICAL EXAMINATION

The Guarantee Fund may organise a medical examination for physically and/or mentally injured victims.

The main purpose of the medical examination is to determine the extent of personal injury to the victim and the classifications of injury that can be compensated as a direct result of the incident. At this point, the doctor assigned by the FGTI carries out a clinical examination and has a conversation with the victim and, where appropriate, their adviser (doctor and/or lawyer).

The doctor assigned by the FGTI must answer a series of set questions as part of a specific expert assessment for victims of terrorist acts: personal and/or professional situation of the victim, study of medical documents, complaints, etc.

Doctors assigned by the FGTI carry out this task independently, with the sole aim of objectively assessing the impact of the attack.

The expert assessment is also carried out in accordance with the adversarial principle, i.e. the victims themselves, or through their advisers (doctors, lawyers), have the opportunity to present their case, both legally and medically.

Therefore, to guarantee the adversarial nature of the expert medical assessment, the victim may be assisted and accompanied by the doctor of their choice, whose fees are paid by the Guarantee Fund, in accordance with the rules in force. The doctor assigned by the FGTI will listen to and take into account the arguments of the doctor assisting the victim and/or their lawyer.

If the victim's condition is stable, the doctor assigned by the FGTI sets the date of consolidation. Consolidation occurs when injuries stabilise and become permanent, making treatment ineffective except to prevent deterioration. It is then possible to assess.

D. OFFER OF COMPENSATION

The offer of compensation is presented following consolidation of the physical or mental impact of the attack, the date of which is determined by the doctor assigned by the FGTI.

On receipt of the final medical report, the Guarantee Fund sends the victim a detailed breakdown of the compensation offered on the basis of this report, after deduction of amounts paid by social security or other welfare agencies, and any advances that may have already been paid.

If a medical examination is not necessary in light of the medical evidence produced by the victim and their needs, they may ask the Guarantee Fund to send them an offer of compensation. The Guarantee Fund will base its ruling on the medical certificates submitted, outstanding costs and loss of income, where appropriate, after deduction of amounts owed to welfare agencies and advances paid.

In all cases, the offer of compensation is determined according to the classifications of injury detailed in chapter 2. A partial offer may be made if there is a lack of evidence to assess some classifications of injury. In case of death

The offer of compensation is sent to the beneficiaries.

It includes compensation for psychological injury, funeral costs and economic loss, after deduction of amounts owed to welfare agencies. Economic loss is calculated on the basis of the share of income that the deceased spent on their relatives.

Offer period

The FGTI makes an offer of compensation to the victim or the relatives of the deceased victim within three months of receipt of the complete claim. Conversations may take place between the victim (or their lawyer) and the FGTI about the various documents to be submitted until the claim is complete.

At the same time as making an offer of compensation, the FGTI pays 80% of the total amount of the offer as an advance payment, after deduction of any advances already paid.

Receipt of the offer

When the victim receives the offer of compensation, they may:

- accept it,
- discuss it (in conversations with the FGTI lawyer in charge of compensation),
- reject it: the amount of compensation is then decided by the county court, following referral by the victim. The case can be referred to either the county court of Créteil (jurisdiction of the registered office of the FGTI) or that of the place where the attack occurred, if committed in France. The Guarantee Fund then makes payment on the basis of the ruling made.

E. METHOD OF PAYEMENT OF COMPENSATION

Compensation may be paid as a lump sum and/or an annuity (regular payments). The decision is taken in agreement with the victim (unless the judge intervenes) based on the amount and the injury being compensated.

In fact, payment in the form of a lump sum does not always protect the victim, particularly when they face on-going expense (e.g. assistance from a third party). On the other hand, if home or vehicle adaptations are required as a result of the incident, a lump-sum payment may be more appropriate.

I. In case of injury

1 CLASSIFICATIONS OF INJURY

Magistrates base compensation for victims on an indicative nomenclature (Dintilhac nomenclature) of classifications of injury, applied by all jurisdictions.

Jurisdictions use an up-to-date tool that gives an indicative framework for some classifications of injury, with ranges for the amount of compensation.

The FGTI also uses these tools to determine its offer of compensation to direct victims (those who have personally suffered injury and survived the incident) and beneficiaries in case of the death of the direct victim.

Classifications of injury are divided into two categories: pecuniary loss (financial loss) and non-pecuniary loss (personal injury).

For direct victims, these two categories are subdivided into temporary and permanent loss or injury. From the date of consolidation, injuries stabilise and become permanent. It will then be possible to distinguish between temporary classifications of injury (before consolidation) and permanent classifications of injury (after consolidation).

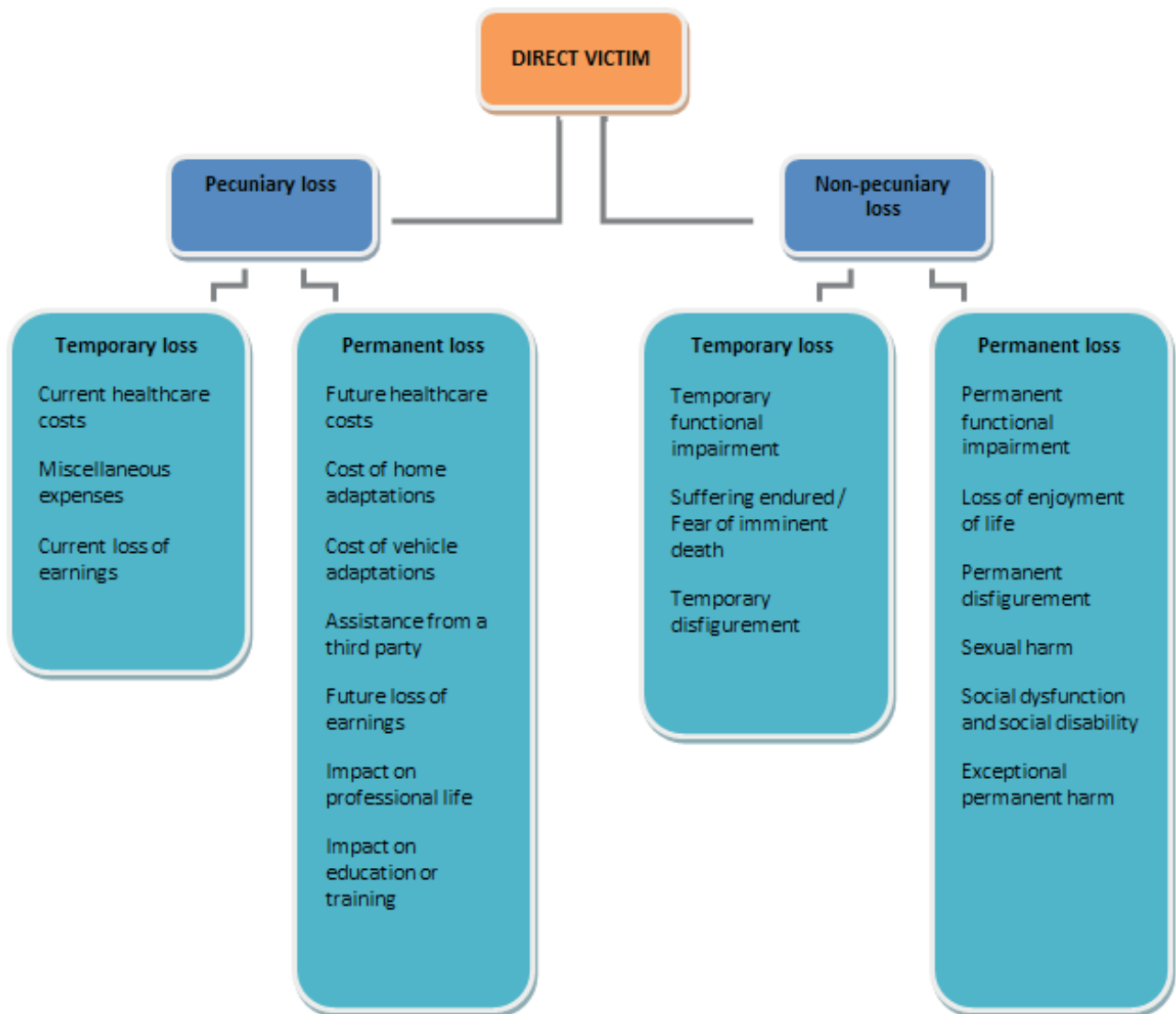
Some classifications are assessed during the medical examination (temporary functional impairment, permanent functional impairment, suffering endured, etc.) and other classifications are assessed by FGTI lawyers on the basis of supporting documents (miscellaneous expenses, loss of current earnings, loss of future earnings, etc.).

In this way, the Guarantee Fund determines its offer, on a case-by-case basis, according to the classifications assessed by the doctor assigned by the FGTI and the supporting documents produced.

The classifications of injury of direct victims (injured victims) and indirect victims (beneficiaries of deceased victims) are presented, in this guide, in the order of the Dintilhac nomenclature.

Compensation of direct victims

Direct victims are those who have personally suffered injury and survived the incident. Not all of the classifications of injury listed below will apply in all situations. Determination of injury is made on a case-by-case basis, according to the personal situation of each victim and the supporting documents produced.



2. PECUNIARY LOSS

Pecuniary loss refers to financial loss.

1. TEMPORARY PECUNIARY LOSS

This refers to financial loss suffered between the date of the terrorist act and the date of medico-legal consolidation.

A. HEALTHCARE COSTS

Healthcare costs before consolidation consist mainly of hospital fees (excluding patient contribution and user fees), surgical expenses, medical expenses, paramedical expenses (nursing, physiotherapy, coulometer therapy, speech therapy, etc.), prescription charges, prostheses, equipment, cosmetic procedures, etc.

Medical treatment and/or psychiatric consultations related to the act of terrorism are fully covered by health insurance. Victims therefore do not have to pay costs in advance, except for any excess fees which will then be reimbursed by their health insurance company and, where appropriate, their supplemental health insurance.

The remaining outstanding costs not covered by these bodies will be paid by the FGTI as part of the compensation. It is therefore essential that the victim justifies outstanding costs in order to be compensated for them, and therefore that they keep the supporting documents for these expenses.

B. MISCELLANEOUS EXPENSES

This classification includes expenses to compensate for non-work activities, i.e. childcare costs, home care, transport costs, etc.

This classification also includes fees that the victim has had to pay to doctors to advise and assist them during the medical examination.

Compensation for miscellaneous expenses is paid upon production of supporting documents.

With regard to temporary assistance from a third party for basic everyday living activities, an assessment is carried out by the doctor assigned by the FGTI on the basis of need. Unlike other miscellaneous expenses, compensation for assistance from a third party is not conditional on the production of supporting documents; however, producing them allows compensation to be paid at the actual hourly rate.

C. LOSS OF EARNINGS

This refers to the loss of income suffered by the victim, as a result of their injury, between the date of the terrorist act and the date of consolidation, after the intervention of welfare agencies (CPAM [local health insurance fund], supplemental health insurance, etc.).

This loss is determined for employees through a statement from the employer, payslips or evidence of daily sickness benefits paid by welfare agencies. For self-employed professionals or workers, loss of earnings will be compensated upon production of tax assessments and annual accounts (balance sheet, operations, annexes) over at least the last two financial years.

2. PERMANENT PECUNIARY LOSS

This refers to financial loss suffered after the date of consolidation.

A. FUTURE HEALTHCARE COSTS

Future healthcare costs include hospital fees, medical expenses, paramedical expenses and prescription and similar charges, even occasional costs, that are medically predictable and made necessary by the victim's condition after consolidation; for example, regular replacement of braces, prostheses, hearing aids, etc.

It is the victim's responsibility to submit all supporting documents for outstanding costs.

B. COST OF HOME ADAPTATIONS

These expenses cover costs that direct victims have to pay to adapt their home to their disability.

This compensation is paid on the basis of invoices, quotes or the findings of a report by a qualified expert (architect, occupational therapist) on the size and amount of work necessary for the victim to live in their home.

The cost of any home adaptations made before consolidation may be compensated under miscellaneous expenses (cf. 1) B. above).

C. COST OF VEHICLE ADAPTATIONS

This classification includes expenses necessary for the adaptation of one or more vehicles to the needs of victims with a permanent disability.

Assessment of this classification of injury is carried out on the basis of invoices, quotes or the findings of a report by a qualified expert.

The costing of this classification of injury takes into account the additional cost of the expense, i.e.

- the higher purchase price of the vehicle compared to the value of the one the victim had before the accident;
- the additional cost of adapting a standard model;
- the higher cost of travelling by car compared to the amount spent on public transport that is now inaccessible, when the victim used to travel by public transport.

The Guarantee Fund also takes into consideration a replacement period in line with the average for French car owners (7-10 years)

D. ASSISTANCE FROM A THIRD PARTY

The injury to be compensated is the cost of the required presence of a third party, who may be a relative of the victim, to assist them, on a permanent basis, with everyday living activities, keep them safe and compensate for their loss of independence.

Compensation is usually paid in the form of annuities to tailor care to long-term needs. It is calculated by assessing, on the day of the offer, the cost of an employee, taking into account the qualifications of the third party.

E. LOSS OF FUTURE EARNINGS

This compensates the victim for the loss or permanent drop in their income as a result of the permanent disability they now face at work as a result of the injury.

Compensation is offered on the basis of supporting documents provided by the victim (tax assessments, payslips, etc.).

F. IMPACT ON PROFESSIONAL LIFE

The purpose of this classification is to compensate the impact of the injury on the victim's professional life, such as the loss suffered as a result of their labour market devaluation, their loss of professional opportunities (to get a promotion, for example) or the increased difficulty of their job. It can also compensate the loss suffered by victims who are forced to give up the occupation they held before the injury for another occupation that they had to choose as a result of their disability.

This classification supplements compensation for loss of earnings.

This classification also compensates the cost of a career change (retraining, for example) and loss of pension points (this refers to the impact on future pension income. It is compensated here, unless it is already compensated through future loss of earnings, provided this is paid in the form of lifetime annuities.

The loss suffered is assessed on the basis of supporting documents provided by the victim (statement from the employer, etc.) and their career history.

G. IMPACT ON EDUCATION OR TRAINING

The purpose of this classification is to remedy the loss of years of education, training etc. as a result of the injury suffered by the victim. This classification not only includes falling behind in schooling or training, but also a change of direction.

Compensation is paid according to the personal situation of the victim.

3. NON-PECUNIARY LOSS

This refers to personal injury :

1. TEMPORARY NON-PECUNIARY LOSS

This refers to non-financial loss suffered between the date of the terrorist act and the date of consolidation

A. TEMPORARY FUNCTIONAL IMPAIRMENT

This refers to discomfort in everyday living activities, as a result of trauma, suffered by the victim in their personal life during the period between the terrorist act and full resumption of all personal leisure activities.

Temporary functional impairment is assessed by the doctor assigned by the FGTI. Periods of total and/or partial discomfort are determined using a coefficient.

Compensation is paid according to the duration and total or partial nature of the discomfort suffered by the victim.

B. SUFFERING ENDURED

This refers to the physical and mental suffering, and associated disorders, endured by the victim from the day of the terrorist act to the date of consolidation of their condition.

Thereafter, from the date of consolidation, suffering endured falls under permanent functional impairment and will therefore be compensated as such.

Suffering endured is assessed by the doctor assigned by the FGTI on a scale of 1-7 (from 'very mild' to 'very severe').

Compensation is paid in accordance with the detailed description of the level of suffering endured provided by the doctor assigned by the FGTI, case law and the following framework:

Suffering endured	Amount
1/7	€1,100
2/7	€2,200
3/7	€4,200
4/7	€8,000
5/7	€16,000
6/7	€30,000
7/7	€45,000

These are minimum amounts that may vary based on the victim's situation. The fear of imminent death suffered by the victim during the terrorist act may be assessed under suffering endured. This injury is assessed specifically under suffering endured as determined by a medical examination. Compensation ranges from €2000 to €5000 depending on the victim's situation.

C. TEMPORARY DISFIGUREMENT

This refers to temporary physical injuries that alter physical appearance, with very harmful personal consequences.

The Dintilhac nomenclature states that this classification only applies in very specific cases, such as severe burns or significant facial trauma.

The compensation offered takes into account the nature, location, size and severity of the physical injury described by the doctor assigned by the FGTI, as well as the amount of time for which the victim suffered this disfigurement.

2. PERMANENT NON-PECUNIARY LOSS

This refers to non-financial loss suffered after the date of consolidation.

A. PERMANENT FUNCTIONAL IMPAIRMENT

This classification remedies the impact of the injury on the victim's personal life only. As such, it covers not only adverse effects on the victim's physiological functions, but also the constant pain they may feel, loss of quality of life and daily problems with their living conditions after consolidation. This classification of injury also remedies any loss of personal independence experienced by the victim in their daily activities, as well as any specific discomfort that remains even after consolidation. The doctor assigned by the FGTI sets a rate of functional impairment from 1-100% calculated based on the 'Indicative scale of assessment of disability rates in common law' published by the Concours Médical in 2001.

Compensation depends on the rate of functional impairment set by the doctor assigned by the FGTI and the age of the victim at the time of consolidation.

The amounts shown in the table below, according to age and rate of permanent functional impairment, are multiplied by the rate set.

So, for example, for a rate of permanent functional impairment of 50% for a victim aged 25, the calculation is as follows: 4,210 x 50 = €210,500.

Rate of d'IPP (partial permanent disability)	0 - 10	11-20	21 - 30	31 - 40	41 - 50	51 - 60	61 - 70	71 - 80	81 - +
1 - 5 %	2 100	1 950	1 780	1 610	1 440	1 270	1 100	950	800
6 - 10 %	2 425	2 250	2 050	1 850	1 640	1 420	1 200	1 025	850
11 - 15 %	2750	2 550	2 320	2 090	1 840	1 570	1 300	1 100	900
16 - 20 %	3 075	2 850	2 590	2 330	2 040	1 720	1 400	1 175	950
21 - 25 %	3 400	3 150	2 860	2 570	2 240	1 870	1 500	1 250	1 000
26 - 30 %	3 725	3450	3 130	2 810	2 440	2 020	1 600	1 325	1 050
31 - 35 %	4 050	3 750	3 400	3 050	2 640	2 170	1 700	1 400	1 100
36 - 40 %	4 375	4 050	3 670	3 290	2 840	2 320	1 800	1 475	1 150
41 - 45 %	4 700	4 350	3 940	3 530	3 040	2 470	1 900	1 550	1 200
46 - 50 %	5 025	4 650	4 210	3 770	3 240	2 620	2 000	1 625	1 250
51 - 55 %	5 350	4 950	4 480	4 010	3 440	2 770	2 100	1 700	1 300
56 - 60 %	5 675	5 250	4 750	4 250	3 640	2 920	2 200	1 775	1 350
61 - 65 %	6 000	5 550	5 020	4 490	3 840	3 070	2 300	1 850	1 400
66 - 70 %	6 325	5 850	5 290	4 730	4 040	3 220	2 400	1 925	1 450
71 - 75 %	6 650	6 150	5 560	4 970	4 240	3 370	2 500	2 000	1 500
76 - 80 %	6 975	6 450	5 830	5 210	4 440	3 520	2 600	2 075	1 550
81 - 85 %	7 300	6 750	6 100	5 450	4 640	3 670	2 700	2 150	1 600
86 - 90 %	7 625	7 050	6 370	5 690	4 840	3 820	2 800	2 225	1 650
91 - 95 %	7 950	7 350	6 640	5 930	5 040	3 970	2 900	2 300	1 700
96 % - +	8 200	7 650	6 910	6 170	5 240	4 120	3 000	2 375	1 750

Rate of d'IPP (partial permanent disability)

B. LOSS OF ENJOYMENT OF LIFE

The sole purpose of this classification of injury is to remedy the specific injury caused by the victim's inability to resume a sport or leisure activity that they practised regularly before the incident.

The injury is assessed in light of the activities previously practised by the victim and the supporting documents provided (permits, invoices, witness statements, etc.). The level and frequency of activity is taken into account.

C. PERMANENT DISFIGUREMENT

This classification aims to remedy physical injuries that permanently alter the victim's physical appearance. Permanent disfigurement is assessed by the doctor assigned by the FGTI on a scale of 1-7.

Disfigurement	Amount
1/7	€1,100
2/7	€2,200
3/7	€4,200
4/7	€8,000
5/7	€16,000
6/7	€30,000
7/7	€45,000

Compensation is determined according to the level of injury assessed and the description given in the medical examination report. It takes into account various parameters such as age and the nature and location of the disfigurement.

These are minimum amounts that may vary based on the victim's situation.

D. SEXUAL HARM

This classification concerns the remedy of sexual harm. It includes difficulty performing sexual acts. Compensation is based on the description given by the doctor assigned by the FGTI in their report.

E. SOCIAL DYSFUNCTION AND SOCIAL DISABILITY

This classification of injury aims to compensate for loss of hope, opportunity or any possibility of a family life as a result of the severity of the permanent disability that the victim continues to suffer after consolidation.

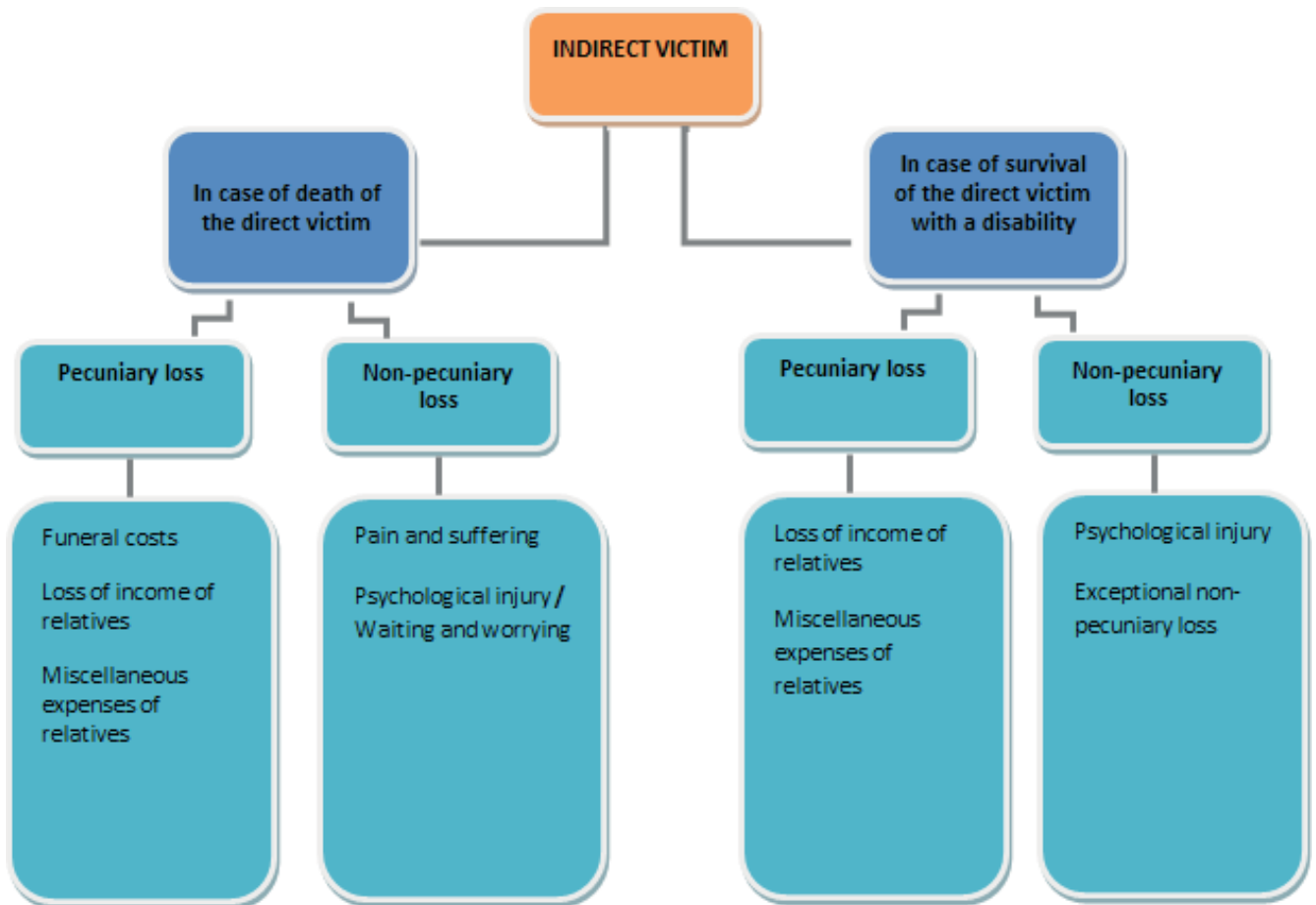
It refers to loss of the opportunity to get married, start a family, raise children and, more generally, disruption to the victim's life plans that requires them to make certain sacrifices in family life.

Compensation will take into account the victim's situation and court practices.

F. EXCEPTIONAL PERMANENT HARM

The Dintilhac nomenclature provides this classifications of injury to take into account exceptional situations for which the 'traditional' classifications of injury are not sufficient (for example: a father with a severe hand injury who can no longer communicate in sign language with his deaf daughter, or can only do so with great difficulty)

Compensation of indirect victims



Indirect victims are the beneficiaries of the direct victim.

As for direct victims, some of the classifications of injury listed below may not be applicable. Determination of injury is made on a case-by-case basis according to each victim's situation and the supporting documents produced.

II. In case of death of direct victim

1. PECUNIARY LOSS

A FUNERAL COSTS

This refers to funeral and burial costs. In principle, payment will be made directly to the funeral directors on the basis of invoices, up to an amount calculated based on the average cost of funerals.

B. LOSS OF INCOME OF RELATIVES

This refers to the loss or drop in income suffered by the spouse (or partner) and dependent children as a result of the victim's death. To determine the loss or drop in income affecting relatives, the Guarantee Fund takes the annual household income before the victim's death as a reference point, taking into account the victim's share of consumption and the income their spouse continues to receive.

C. MISCELLANEOUS EXPENSES OF RELATIVES

This classification of injury aims to compensate the relatives of the direct victim for miscellaneous expenses they may have been incurred upon their death. It covers, for example, transport costs for geographically distant close relatives (parents, children, brothers and sisters) to attend the funeral.

Compensation is paid on the basis of supporting documents.

2. NON-PECUNIARY LOSS

A. PAIN AND SUFFERING

This remedies the disruption to everyday life suffered by the relatives of the direct victim from the date of the terrorist act to the date of death as a result of the injuries sustained. It includes the entire period of care before death.

Relatives must have cohabited and had an emotional relationship with the direct victim.

Compensation takes into account the particular circumstances of each of the relatives and relevant court practices.

B. PSYCHOLOGICAL INJURY

This refers to compensation for the psychological injury suffered by some relatives as a result of the death of the direct victim.

Relatives who are especially affected include spouses, ascendants, descendants and siblings. Beyond this, special cases may be taken into account on the basis of emotional ties.

Compensation takes into account degree of kinship.

Relationship		Amount
Spouse/partner		€35,000
Children for the death of a parent	Child up to the age of 25	€25,000
	Child over the age of 25 living at home	€20,000
	Child over the age of 25 not living at home	€15,000
Parents for the death of a child	Child up to the age of 25	€35,000
	Child over the age of 25 living at home	€30,000
	Child over the age of 25 not living at home	€25,000
Grandparents for the death of a grandchild	Evidence of regular contact	€11,000 *
	No evidence of regular contact	€7,000
Grandchildren for the death of a grandparent	Evidence of regular contact	€10,000 *
	No evidence of regular contact	€7,000
Brothers/sisters	Cohabitation	€15,000
	Without cohabitation	€12,000

These amounts may be increased to take into account cohabitation of the beneficiary and the deceased.

Psychological injury takes into account the pathological impact that the death may have had on some relatives.

Grief is made up of several phases that can last from 1-2 years. Grief becomes pathological when psychopathological disorders or symptoms appear that did not exist prior to the death of the victim of the terrorist act. Pathological grief is diagnosed by a doctor.

When it happens to a relative of the victim, who continues to suffer the impact, a medical examination may be organised to assess the injury. The offer of compensation is based, in this case, on medical findings.

Subject to cohabitation, waiting and worry may be compensated under suffering endured by relatives prior to the announcement of the victim's death.

This injury is assessed either specifically under suffering endured as determined by a medical examination, or by an increase in the level of psychological injury.

III. IN CASE OF SURVIVAL OF DIRECT VICTIM

1. PECUNIARY LOSS

A. LOSS OF INCOME OF RELATIVES

This refers to the loss or drop in income suffered by close relatives (spouse (or partner) and dependent children) exclusively as a result of the direct victim's disability.

To determine the loss or drop in income affecting relatives, the Guarantee Fund takes as a reference point the annual household income before the injury that led to the direct victim's disability, taking into account the victim's share of consumption and the wages their spouse (or partner) continues to receive.

B. MISCELLANEOUS EXPENSES

This classification of injury aims to compensate relatives of the direct victim for any miscellaneous expenses they may have incurred during or after the trauma of the victim suffering from a disability.

It covers mainly transport and accommodation costs. Compensation is paid on the basis of supporting documents.

2. NON-PECUNIARY LOSS

A. PSYCHOLOGICAL INJURY

This remedies the psychological injury suffered by some relatives of severely disabled victims in view of the pain and suffering of the direct victim.

Relatives who are especially affected include spouses, ascendants, descendants and siblings. Beyond this, special cases may be taken into account on the basis of emotional ties.

Compensation takes into account degree of kinship.

B. EXCEPTIONAL NON-PECUNIARY LOSS

The Dintilhac nomenclature provides this classification of injury for relatives cohabiting with the severely handicapped victim, to take into account exceptional circumstances for which the 'traditional' classifications of injury are not sufficient.

IV EXCEPTIONAL INJURY SPECIFIC TO VICTIMS OF TERRORIST ACTS

In addition to the classifications of injury defined by the nomenclature, the Board of Directors of the FGTI has decided to include a specific exceptional injury for victims of terrorist acts (PESVT) to take into account the specific nature of their situation and in particular the state of post-traumatic stress and/or disorders related to the specific nature of these events.

This classification is therefore applicable to victims who have suffered physical and/or psychological injury. The amount, a minimum of €10,000, is set by the Board of Directors of the FGTI.

The Board of Directors of the FGTI has also made the decision to award a sum for PESVT to the beneficiaries of deceased victims. The amount is set according to degree of kinship:

Beneficiary		Amount
Spouse/ partner		€17,500
Children for the death of a parent	Child up to the age of 25	€12,500
	Child over the age of 25 living at home	€10,000
	Child over the age of 25 not living at home	€7,500
Parents for the death of a child	Child up to the age of 25	€17,500
	Child over the age of 25 living at home	€15,000
	Child over the age of 25 not living at home	€12,500
Grandparents for the death of a grandchild	Evidence of regular contact	€5,000
	No evidence of regular contact	€3,500
Grandchildren for the death of a grandparent	Evidence of regular contact	€5,000
	No evidence of regular contact	€3,500
Brothers/ sisters	Cohabitation	€7,500
	Without cohabitation	€6,000